ITEM 1008-D X 96-2: H.Rp. 976/PT.2

96TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPT. 96-976, Part II

ASSISTING THE ELECTRICAL CONSUMERS OF THE PACIFIC NORTHWEST THROUGH USE OF THE FEDERAL COLUMBIA RIVER POWER SYSTEM TO ACHIEVE COST-EFFECTIVE ENERGY CONSERVATION, TO ENCOURAGE THE DEVELOPMENT OF RENEWABLE ENERGY RESOURCES, TO ESTABLISH A REPRESENTATIVE REGIONAL POWER PLANNING PROCESS, TO ASSURE THE REGION OF AN EFFICIENT AND ADEQUATE POWER SUPPLY, AND FOR OTHER PURPOSES

SEPTEMBER 16, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

COMPLETED ORIGINAL

REPORT

together with

SUPPLEMENTAL, ADDITIONAL, SEPARATE, and DISSENTING VIEWS

[To accompany S. 885]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 885) to assist the electrical consumers of the Pacific Northwest through use of the Federal Columbia River Power System to achieve cost-effective energy conservation, to encourage the development of renewable energy resources, to establish a representative regional power planning process, to assure the region of an efficient and adequate power supply, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following:

67-549 O - 80

(90)

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act, together with the following table of contents, may be cited as the "Pacific Northwest Electric Power Planning and Conservation Act".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Purposes.
Sec. 3. Definitions.
Sec. 4. Regional planning and participation.
Sec. 5. Sale of power.
Sec. 6. Conservation and resource acquisition.
Sec. 7. Rates.
Sec. 8. Amendments to existing law.
Sec. 9. Administrative provisions.
Sec. 10. Savings provision.
Sec. 11. Effective Date.

PURPOSES

SEC. 2. The purposes of this Act, all of which are to be consistent with applicable provisions of environmental and other laws, are—

(1) to encourage, through the unique opportunity provided by the Federal Columbia River Power System, conservation and efficiency in the use of electric power and the development of renewable resources within the Pacific Northwest;

(2) to assure the Pacific Northwest an adequate, efficient, economical, and reliable power supply;

(3) to provide for the participation and consultation of the Pacific Northwest States, local governments, consumers, customers, users of the Columbia River System (including Federal and State fish and wildlife agencies and appropriate Indian tribes), and the public at large within the region in the development of regional plans and programs related to energy conservation, renewable resources, other resources, and in achieving the purposes of this Act to facilitate the orderly planning of the region's power system, to provide environmental quality, and to protect, mitigate, and enhance the fish and wildlife resources;

(4) to provide that the customers of the Bonneville Power Administration and their consumers continue to pay all costs necessary to produce, transmit, and conserve resources to meet the region's electric power requirements, including the amortization of the Federal investment in the Federal Columbia River Power System;

(5) to insure, subject to the provisions of this Act—

(A) that the authorities and responsibilities of State and local governments, electric utility systems, water management agencies, and other non-Federal entities for the regulation, planning, conservation, supply, distribution, and use of electric power shall be construed to be maintained, and

(B) that Congress intends that this Act not be construed to limit or restrict the ability of customers to take actions in accordance with other applicable provisions of Federal or State law, including, but not limited to, actions to plan, develop, and operate resources and to achieve conservation, without regard to this Act; and

(6) to protect, mitigate, and enhance the fish and wildlife, including related spawning grounds and habitat, of the Columbia River and its tributaries, particularly anadromous fish which are of significant importance to the social and economic well-being of the Pacific Northwest and the Nation and which are dependent on suitable environmental conditions substantially obtainable from the management and operation of the Federal Columbia River Power System and other facilities on the Columbia River and its tributaries.

DEFINITIONS

SEC. 3. As used in this Act, the term—

(1) "Acquire" and "acquisition" shall not be construed as authorizing the Administrator to construct, or have ownership of, under this Act or any other law, any electric generating facility.

(2) "Administrator" means the Administrator of the Bonneville Power Administration.

(3) "Conservation" means any reduction in electric power consumption as a result of increases in the efficiency of energy use, production, or distribution.

(4)(A) "Cost-effective", when applied to any measure or resource referred to in this Act, means that such measure or resource must be forecast—

(i) to be reliable and available within the time it is needed, and

(ii) to meet or reduce the electric power demand, as determined by the Council or the Administrator, as appropriate, of the consumers of the customers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative measure or resource, or any combination thereof.

(B) For purposes of this paragraph, the term "system cost" means an estimate of all direct costs of a measure or resource over its effective life, including, if applicable, the cost of distribution and transmission to the consumer and, among other factors, waste disposal costs, end-of-cycle costs, decommissioning costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as the Administrator determines, on the basis of a methodology developed by the Council as part of the plan, or in the absence of the plan by the Administrator, are directly attributable to such measure or resource.

(C) In determining the amount of power that a conservation measure or other resource may be expected to save or to produce, the Council or the Administrator, as the case may be, shall take into account projected realization factors and plant factors, including appropriate historical experience with similar measures or resources.

(D) For purposes of this paragraph, the "estimated incremental system cost" of any conservation measure or resource shall not be treated as greater than that of any nonconservation measure or resource unless the incremental system cost of such conservation measure or resource is in excess of 110 per centum of the incremental system cost of the nonconservation measure or resource.

(5) "Consumer" means any end user of electric power.

(6) "Council" means, unless otherwise specifically provided, the members appointed to the Pacific Northwest Electric Power and Conservation Planning Council established by this Act.

(7) "Customer" means anyone who contracts for the purchase of power from the Administrator pursuant to this Act.

(8) "Direct service industrial customer" means an industrial customer that contracts for the purchase of power from the Administrator for direct consumption.

(9) "Electric power" means electric peaking capacity, or electric energy, or both.

(10) "Federal base system resources" means—

(A) the Federal Columbia River Power System hydroelectric projects;

(B) resources acquired by the Administrator under long-term contracts in force on the effective date of this Act; and

(C) resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources referred to in subparagraphs (A) and (B).

(11) "Indian tribe" means any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior.

(12) "Major resource" means any resource that—

(A) has a planned capability greater than fifty average megawatts, and

(B) if acquired by the Administrator, is acquired for a period of more than five years but does not mean any resource acquired pursuant to section 11(b)(6) of the Federal Columbia River Transmission System Act.

(13) "New large single load" means any load associated with a new facility, an existing facility, or an expansion of an existing facility—

(A) which is not contracted for, or committed to, as determined by the Administrator, by a public body, cooperative, investor-owned utility, or Federal agency customer, as applicable prior to September 1, 1979, and

(B) which will result in an increase in power requirements of ten average megawatts or more in any consecutive twelve-month period.

(14) "Pacific Northwest", "region", or "regional" means—

(A) the area consisting of the States of Oregon, Washington, and Idaho, the portion of the State of Montana west of the Continental Divide, and such portions of the States of Nevada, Utah, and Wyoming as are within the Columbia River drainage basin; and

(B) any contiguous areas, not in excess of seventy-five air miles from the area referred to in subparagraph (A), which are a part of the service area of a rural electric cooperative customer served by the Administrator on the effective date of this Act which has a distribution system from which it serves both within and without such region.

(15) "Plan" means the Regional Electric Power and Conservation plan adopted pursuant to this Act and such plan shall apply to actions of the Administrator as specified in this Act.

(16) "Renewable resource" means a resource which utilizes solar, wind, hydro, geothermal, biomass, or similar sources of energy and which either is used for electric power generation or will reduce the electric power requirements of a consumer, including by direct application.

(17) "Reserves" means the electric power needed to avert particular planning or operating shortages for the benefit of firm power customers of the Administrator and available to the Administrator—

(A) from resources, or

(B) from rights to interrupt, curtail, or otherwise withdraw, as provided by specific contract provisions, portions of the electric power supplied to customers.

(18) "Residential use" or "residential load" means all usual residential, apartment, seasonal dwelling and farm electric loads or uses, but only the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm.

(19) "Resource" means—

(A) electric power, including the actual or planned electric power capability of generating facilities, or

(B) actual or planned load reduction resulting from direct application of a renewable energy resource by a consumer, or from a conservation measure.

(20) "Secretary" means the Secretary of Energy.

REGIONAL PLANNING AND PARTICIPATION

Sec. 4. (a)(1) To facilitate cooperation among the States of Idaho, Montana, Oregon, and Washington, and the United States pursuant to this Act, there is established the Pacific Northwest Electric Power and Conservation Planning Council, which shall have its offices in the Pacific Northwest. The Council shall be composed of eight members, and shall be considered formed when at least six members have been appointed.

(2) The Governors of Idaho, Montana, Oregon, and Washington may appoint, subject to applicable State law, two members from their respective States to carry out the functions of Council members set forth in this Act. The applicable State authorities and appointing actions of the States shall constitute an agreement to the exercise by the Council of the functions set forth in this Act, to which the Congress hereby consents.

(3) Members of the Council appointed pursuant to section 4(a)(2) shall—

(A) serve until June 30 of the third twelve-month period following the date of their appointment, unless otherwise provided by State law;

(B) be subject to removal in accordance with the provisions of State law;

(C) be compensated according to such State law from funds available pursuant to paragraph (14); and

(D) be deemed to be officers or employees of their respective States, and not of the United States.

(4)(A) If the Governors have not appointed at least six Council members by April 30, 1981, or if, for any other reason the Council set forth in paragraph (2) is unable to be formed or is held by a United States court of appeals to be unable to perform substantially all of its functions, the Secretary shall temporarily appoint two members from each of the States of Washington, Oregon, Idaho, and Montana to serve on an interim basis until such time as Congress or the States act to cure any impediment to the appointment of Council members pursuant to paragraph (2). Any appointments by the Secretary under this paragraph shall be made in a manner designed to assure continuity of the Council's functions and to minimize any possible disruption of the Council's activities during such interim period. Unless extended by the Congress, the interim Council appointed pursuant to this paragraph shall terminate at the end of the second full Congress following the first temporary appointment.

(B) Within one year after making any such temporary appointment pursuant to this paragraph, the Secretary, in consultation with the Governors of the Pacific Northwest States, shall formally submit to the appropriate committees of Congress recommended legislation that will permit members to be appointed by the Governors in the manner set forth in paragraph (2). The Secretary shall make quarterly reports to the Governors on the progress of such legislation until its enactment and to Congress as to whether the interim Council should be extended or any other recommendations for legislation or other action which the Secretary recommends should be taken, following termination of the Council, to continue carrying out the purposes for which the Council was established.

(C) If members are appointed by the Secretary on an interim basis pursuant to this paragraph, they shall (i) receive compensation under the General Schedule at a rate equivalent to the salary of members appointed from the same State by the Governor pursuant to paragraph (2); (ii) be considered during their temporary appointments, officers or employees of the United States for purposes of title II of the Ethics in Government Act of 1978 (5 U.S.C. app.); and (iii) be allowed travel expenses, including per diem in lieu of subsistence expenses, in addition to the compensation provided in this paragraph.

(D) In the event the Congress fails to extend the interim Council or enact legislation to cure any impediment to the appointment of Council members pursuant to paragraph (2), the Administrator may not implement any proposal to acquire a major generating resource or to grant billing credits or services involving a major generating resource until the expenditure of funds for that purpose has been specifically approved by Act of Congress.

(5) A majority of the members of the Council shall constitute a quorum. Except as otherwise provided specifically in this Act, all actions and decisions of the Council shall be by majority vote of the voting members present and voting. The plan or any part thereof and any amendment thereto shall not be approved unless such plan or amendment receives the votes of (A) a majority of the members appointed to the Council, including the vote of at least one member from each State; or (B) at least six members of the Council.

(6) The members of the Council shall select from among themselves a Chairman for the Council. The Council shall meet at the call of the Chairman or upon the request of a majority of the members of the Council. If any member of the Council disagrees with respect to any matter transmitted to any Federal or State official or any other person or wishes to express additional views concerning such matter, such member may submit a statement to accompany such matter setting forth the reasons for such disagreement or views.

(7) The Council shall appoint, and may assign and delegate duties to such executive and administrative personnel as the Council deems necessary to fulfill its functions under this Act, taking into account such information and analyses as are, or are likely to be, available from other sources pursuant to provisions of this Act. No person appointed by the Council shall be deemed to be an employee of the United States.

(8) Upon request of the Council, the head of any Federal agency is authorized to detail to the Council, on a reimbursable basis, any of the personnel of such agency to assist the Council in the performance of its functions under this Act.

(9) To obtain such information and advice as the Council determines to be necessary or appropriate to carry out the purposes of this Act, the Council shall, to the greatest extent practicable, solicit engineering, economic, social, environmental, and other technical studies from customers of the Administrator and from other bodies or organizations in the region with particular expertise.

(10) The Council shall determine its organization and prescribe its practices and procedures for carrying out its functions under this Act. The Council shall make available to the public a statement of its organization, practices, and procedures, and make available to the public its annual work program budget at the time the President submits his annual budget to Congress.

(11) The Administrator and other Federal agencies, to the extent authorized by other provisions of law, shall furnish the Council all information requested by the Council as necessary for performance of its functions, subject to such requirements of law concerning trade secrets and proprietary data as may be applicable.

(12)(A) At the request of the Council, the Administrator shall pay from funds available to the Administrator the compensation and other expenses of the Council as are authorized by this Act and as the Council determines are necessary or appropriate for the performance of its functions including financial support to those States which have appointed members to the Council pursuant to section 4(a)(2) for their participation in the Council and activities of the State related thereto. Funds for such payments shall be included by the Administrator in his annual budgets submitted to Congress pursuant to the Federal Columbia River Transmission System Act and shall be subject to the requirements of that Act, including the audit requirements of section 11(d). Such funds shall not exceed annually an amount equal to 0.02 mill multiplied by the kilowatt hours sold by the Administrator during the preceding calendar year. In order to assist the Council's initial organization, the Administrator after the enactment of this Act shall promptly prepare and propose an amended annual budget to expedite payment for Council activities.

(B) Notwithstanding the limitation contained in the third sentence of subparagraph (A), upon an annual showing by the Council that such limitation will not permit the Council to carry out its functions under this Act, the Administrator may raise such limit up to any amount not in excess of 0.10 mill multiplied by the kilowatt hours sold by the Administrator during the preceding calendar year.

(b)(1) The Council shall, subject to applicable law, establish a voluntary scientific and statistical advisory committee to assist in the development, collection, and evaluation of such statistical, biological, economic, social, environmental, and other scientific information as is relevant to the Council's development and amendment of a regional conservation and electric power plan.

(2) The Council may, subject to applicable law, establish such other voluntary advisory committees as it determines are necessary or appropriate to assist it in carrying out its functions under this Act.

(c) The Council shall ensure that the membership of any advisory committee established or formed pursuant to subsection (b) of this section shall, to the greatest extent feasible, be composed of representatives of, and seek the advice of, the various Federal, State, and Indian Tribal Governments, consumer groups, and customers whose interests are or may be directly or indirectly substantially affected by the recommendations of such advisory committees.

(d) Within two years after the effective date of this Act, the Council shall prepare, adopt, and promptly transmit to the Administrator a regional conservation and electric power plan. The adopted plan, or any portion thereof, may be amended from time to time, and shall be reviewed by the Council not less frequently than once every five years. Prior to such adoption, public hearings shall be held in each Council member's State on the plan or substantial, nontechnical amendments to the plan proposed by the Council for adoption. A public hearing shall also be held in any other State of the region on the plan or amendments thereto, if the Council determines that the plan or amendments would likely have a substantial impact on that State in terms of major resources which may be developed in that State and which the Administrator may seek to acquire. Action of the Council under this subsection concerning such hearings shall be subject to section 553 of title 5, United States Code and such procedures as the Council shall adopt.

(e)(1) The plan shall, as provided in this paragraph, give priority to resources which the Council determines to be cost effective. Priority shall be given: first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel conversion efficiency; and fourth, to all other resources.

(2) The plan shall set forth a general scheme for implementing conservation measures and developing resources pursuant to section 6 of this Act to reduce or meet the Administrator's obligations with due consideration by the Council of (A) environmental quality, (B) compatibility with the existing regional power system, (C) protection, mitigation, and enhancement of fish and wildlife and related spawning grounds and habitat including sufficient quantities and qualities of flows for successful migration, survival, and propagation of anadromous fish, and (D) other criteria which may be set forth in the plan.

(3) To accomplish the priorities established by this subsection, the plan shall include the following elements which shall be set forth in such detail as the Council determines to be appropriate:

(A) an energy conservation program to be implemented under this Act including, but not limited to, model conservation standards;

(B) recommendations for research and development;

(C) a methodology for determining quantifiable environmental costs and benefits under section 3(4);

(D) a demand forecast of at least twenty years (developed in consultation with the Administrator, the customers, the States, including State agencies with ratemaking authority over electric utilities, and the public, in such manner as the Council deems appropriate) and a forecast of power resources estimated by the Council to be required to meet the Administrator's obligations and the portion of such obligations the Council determines can be met by resources in each of the priority categories referred to in paragraph (1) which forecast (i) shall include regional reliability and reserve requirements, (ii) shall take into account the effect of the requirements of subsection (h) on the availability of resources to the Administrator, and (iii) shall include the approximate amounts of power the Council recommends should be acquired by the Administrator on a long-term basis and the types of resources from which such power should be acquired;

(E) an analysis of reserve and reliability requirements and cost-effective methods of providing reserves designed to insure adequate electric power at the lowest probable cost;

(F) the program adopted pursuant to subsection (h); and

(G) if the Council recommends surcharges pursuant to subsection (f), a methodology for calculating such surcharges.

(4) The Council shall undertake studies of conservation measures reasonably available to direct service industrial customers and other major consumers of electric power within the region and make an analysis of the estimated reduction in energy use which would result from the implementation of such measures as rapidly as possible, consistent with sound business practices. The Council shall include in such study and analysis estimates of financial assistance to the extent such assistance might be necessary for particular conservation measures to be implemented.

(f)(1) Model conservation standards to be included in the plan shall include, but not be limited to, standards applicable to (A) new and existing structures, (B) utility, customer, and governmental conservation programs, and (C) other consumer actions for achieving conservation. Model conservation standards shall reflect geographic and climatic differences within the region and other appropriate considerations, and shall be designed to produce all power savings that are cost-effective for the region and economically feasible for consumers through financial assistance made available to consumers under section 6(a) of this Act. These model conservation standards shall be adopted by the Council and included in the plan after consultation, in such manner as the Council deems appropriate, with the Administrator, States, and political subdivisions, customers of the Administrator, and the public.

(2) The Council by a majority vote of the members of the Council is authorized to recommend to the Administrator a surcharge and the Administrator shall thereafter impose such a surcharge, in accordance with the methodology provided in the plan, on customers for those portions of their loads within the region that are within States or political subdivisions which have not, or on the Administrator's customers which have not, implemented conservation measures applicable to such customers that achieve energy savings which the Administrator determines are comparable to those which would be obtained under such standards. Such surcharges shall be established to recover such additional costs as the Administrator determines will be incurred because such projected energy savings attributable to such conservation measures have not been achieved, but in no case may such surcharges be less than 10 per centum or more than 50 per centum of the Administrator's applicable rates for such load or portion thereof.

(g) To insure widespread public involvement in the formulation of regional power policies, the Council and Administrator shall—

(1) take into account, and give due consideration to, the results of the voting in any election bearing on those policies held in those States, or subdivisions thereof, which comprise the region, as defined in section 3(14), and

(2) maintain comprehensive programs to—

(A) inform the Pacific Northwest public of major regional power issues,

(B) obtain public views concerning major regional power issues, and

(C) secure advice and consultation from the Administrator's customers and others.

(h)(1)(A) The Council shall develop and adopt, pursuant to this subsection, a program to protect, mitigate, and enhance fish and wildlife, including habitat, on the Columbia River and its tributaries. Because of the unique history, problems and opportunities presented by the development and operation of the hydroelectric facilities on the Columbia River and its tributaries, the program shall be designed to deal with that river and its tributaries as a system. As a result, this subsection shall be applicable solely to fish and wildlife, including habitat, located on the Columbia River and its tributaries. Nothing in this subsection shall alter, modify or affect in any way the laws applicable to other rivers, river systems, or electric power facilities, or affect the rights and obligations of any agency, entity, or person under such laws.

(B) The Council shall request in writing promptly after the effective date of this Act and prior to the development or review of the plan, or any major revision thereto, from the Federal and the region's State fish and wildlife agencies and the region's appropriate Indian tribes, recommendations for—

(i) measures which the Administrator, using authorities under this Act and other laws, and other Federal agencies can implement to protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries;

(ii) objectives for the development and operation of projects of the Columbia River and its tributaries in a manner designed to protect, mitigate, and enhance fish and wildlife, and

(iii) fish and wildlife management coordination and research and development (including funding) which, among other things, will assist protection, mitigation and enhancement of anadromous fish at and between the region's hydroelectric dams.

(C)(i) Agencies and tribes shall have ninety days to respond to such request, unless the Council extends the time for making such recommendations. The Federal and the region's water management agencies, and the region's electric power producing agencies, customers and public may submit recommendations of the type referred to in subparagraph (1)(B), and comments on the recommendations submitted by agencies and tribes, within such reasonable time as the Council shall provide. All recommendations shall be accompanied by detailed information and data in support of the recommendations.

(ii) The Council shall give notice of all recommendations and shall make recommendations and supporting documents available to the Administrator, to the Federal and the region's State fish and wildlife agencies, to the appropriate Indian tribes, to Federal agencies responsible for managing, operating or regulating hydroelectric facilities located on the Columbia River or its tributaries, and to any customer or other electric utility which owns or operates any such facility. Upon request, notice shall also be given to members of the public, and copies of recommendations and supporting documents shall be made available at reasonable cost. The Council shall provide opportunities for public participation and comment regarding the recommendations and supporting documents by conducting hearings or by other appropriate means.

(iii) Thereafter, the Council shall develop a program on the basis of recommendations, supporting documents, and relevant additional views and information. The program shall consist of measures to protect, mitigate and enhance fish and wildlife affected by the development or operation of such facilities while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply. Enhancement measures shall be included in the program to the extent they satisfy the criteria of this subsection and are designed to achieve protection and mitigation.

(iv) Measures included in the program shall—

(1) complement the existing and future activities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes;

(2) be based on and supported by the best available scientific knowledge;

(3) achieve sound biological objectives at minimum economic cost for each objective;

(4) be consistent with the legal rights of appropriate Indian tribes in the region;

and, in the case of anadromous fish;

(5) provide for improved survival of such fish at hydroelectric facilities located on the Columbia River system; and

(6) provide flows of sufficient quality and quantity between such facilities to improve production, migration and survival of such fish as necessary to meet sound biological objectives.

(v) The Council shall determine whether each recommendation received is consistent with the purposes of this Act. In the event such recommendations are inconsistent with each other, the Council, in consultation with appropriate entities, shall resolve such inconsistency in the program giving due weight to the recommendations, expertise, and legal rights and responsibilities of the Federal and the region's State fish and wildlife agencies and appropriate Indian tribes. If the Council does not adopt any recommendation as part of the program, it shall explain in writing, as part of the program, the basis for its finding that the adoption of such recommendation would be—

(1) inconsistent with the purposes of the Act;

(2) inconsistent with the standards for the program established in this paragraph; or

(3) less effective than the adopted recommendations for the protection, mitigation, and enhancement of fish and wildlife.

(vi) The Council shall recognize, in developing and adopting a program pursuant to this subsection, the following additional principles:

(1) enhancement measures may be used, in appropriate circumstances, as a means of achieving offsite protection and mitigation with respect to compensation for losses arising from the development and operation of the hydroelectric facilities of the Columbia River and its tributaries as a system,

(2) consumers of electric power shall bear the cost of measures designed to deal with adverse impacts caused by the development and operation of electric power facilities and programs only,

(3) monetary costs and electric power losses resulting from the implementation of the program shall be allocated by the Administrator consistent with individual project impacts and system-wide objectives pursuant to paragraph (2) of this subsection, and

(4) to the extent the program provides for coordination of its measures with additional measures (including additional enhancement measures and measures to deal with impacts caused by factors other than the development and operation of electric power facilities and programs), such additional measures are to be implemented in accordance with agreements among the appropriate parties providing for the administration and funding of such additional measures.

(vii) The Council shall adopt such program within one year of the time provided for receipt of the recommendations in section 4(h)(1)(B). Such program shall also be included in the plan adopted by the Council under subsection (d). The Council's actions pursuant to this paragraph shall be subject to judicial review under the provisions of section 9(e).

(2)(A) The Administrator shall use the Bonneville Power Administration fund and appropriations, if any, and the authorities available to the Administrator under this Act and other laws administered by the Administrator, to protect, mitigate, and enhance the fish and wildlife to the extent affected by the development and operation of any hydroelectric project of the Columbia River and its tributaries in a manner consistent with the plan, the program adopted by the Council under section 4(h)(1), the purposes of this Act, and the provisions of other laws. Expenditures of the Administrator pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.

(B) The Administrator may make expenditures from such fund for such purposes which shall have been included in the annual or supplementary budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act. Any amounts included in such budget for the construction of capital facilities with an estimated life of greater than five years or an aggregate capital cost of over $1 million shall be funded as provided in the appropriation Acts from the proceeds of bonds issued by the Administrator pursuant to section 13 of the Federal Columbia River Transmission System Act or from appropriations, including appropriations to other Federal agencies for such purposes.

(C) The amounts expended by the Administrator for each activity pursuant to this subsection shall be allocated as appropriate by the Administrator, in consultation with the Corps of Engineers and the Water and Power Resources Service, among the various hydroelectric projects of the Federal Columbia River Power System. Amounts so allocated shall be further allocated to the various project purposes in accordance with existing accounting procedures for the Federal Columbia River Power System.

(3)(A) The Administrator and other Federal agencies responsible for managing, operating, or regulating Federal or non-Federal hydroelectic facilities located on the Columbia River or its tributaries shall—

(i) exercise such responsibilities in coordination with one another, consistent with the purposes of this Act and other applicable laws, to adequately protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat, affected by such projects or facilities in a manner that provides equitable treatment for such fish and wildlife with the other purposes for which such system and facilities are managed and operated under other provisions of law;

(ii) exercise such responsibilities, taking into account at each relevant stage of decisionmaking processes to the fullest extent practicable, the program adopted by the Council under paragraph (1).

If, and to the extent that, such other Federal agencies as a result of such consideration impose upon any non-Federal electric power project measures to protect, mitigate and enhance fish and wildlife which are not attributable to the development and operation of such project, then the resulting monetary costs and power losses (if any) shall be borne by the Administrator in accordance with paragraph (2) of this subsection.

(B) The Administrator and such Federal agencies shall consult with the Secretary of the Interior, the Assistant Administrator for the National Marine Fisheries Service, and the State fish and wildlife agencies of the region, appropriate Indian tribes and affected project operators in carrying out the provisions of this paragraph.

(4) Beginning on October 1 of the first fiscal year after all members to the Council are appointed initially, the Council shall submit annually a detailed report to the Committee on Energy and Natural Resources of the Senate and to the Committees on Interstate and Foreign Commerce and on Interior and Insular Affairs of the House of Representatives. The report shall describe the actions taken and to be taken by the Council under this section including this subsection, the effectiveness of the fish and wildlife program, and potential revisions or modifications to the program to be included in the plan. At least ninety days prior to its submission of such report, the Council shall make available to such fish and wildlife agencies, and

tribes, the Administrator and the customers a draft of such report. The Council shall establish procedures for timely comments thereon. The Council shall include as an appendix to such report such comments or a summary thereof. The Administrator shall keep such committees fully and currently informed of the actions taken and to be taken by the Administrator under this Act, including this subsection.

(5) If, after one year from the effective date of this Act, the Council is unable to be formed or to perform its functions under the provisions of this subsection, the Administrator shall, upon request of the region's State and Federal fish and wildlife agencies or appropriate Indian tribes, carry out the development of a program in accordance with the provisions of this subsection, until such time as the Council is formed or the Administrator determines it is able to perform its functions.

(i) In carrying out the provisions of this section, the Council and the Administrator shall—

(1) consult with the Administrator's customers;

(2) include the comments of such customers in the record of the Council's proceedings; and

(3) recognize and not abridge the authorities of State and local governments, electric utility systems, and other non-Federal entities responsible to the people of the Pacific Northwest for the planning, conservation, supply, distribution, and use of electric power and the operation of electric generating facilities.

(j) In the preparation, adoption, and implementation of the plan, the Council and the Administrator shall encourage the cooperation, participation, and assistance of appropriate Federal agencies, State entities, State political subdivisions, and Indian tribes. The Council and the Administrator are authorized to contract, in accordance with applicable law, with such agencies, entities, tribes, and subdivisions individually, in groups, or through associations thereof to (1) investigate possible measures to be included in the plan, (2) provide public involvement and information regarding a proposed plan or amendment thereto, and (3) provide services which will assist in the implementation of the plan. In order to assist in the implementation of the plan, particularly conservation, renewable resource, and fish and wildlife activities, the Administrator, when requested and subject to available funds, may provide technical assistance in establishing conservation, renewable resource, and fish and wildlife objectives by individual States or subdivisions thereof or Indian tribes. Such objectives, if adopted by a State or subdivision thereof or Indian tribes, may be submitted to the Council and the Administrator for review, and upon approval by the Council may be incorporated as part of the plan.

SALE OF POWER

SEC. 5. (a) All power sales under this Act shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937 (16 U.S.C. 832 and following) and, in particular, sections 4 and 5 thereof. Such sales shall be at rates established pursuant to section 7.

(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the region to the extent that such firm power load exceeds—

(A) the capability of such entity's firm peaking and energy resources used in the year prior to the enactment of this Act to serve its firm load in the region, and

(B) such other resources as such entity determines, pursuant to contracts under this Act, will be used to serve its firm load in the region.

In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights.

(2) Contracts with investor-owned utilities shall provide that the Administrator may reduce his obligations under such contracts in accordance with section 5(a) of the Bonneville Project Act of 1937.

(3) In addition to his authorities to sell electric power under paragraph (1), the Administrator is also authorized to sell electric power to Federal agencies in the region.

(4) Sales under this subsection shall be made only if the public body, cooperative, Federal agency or investor-owned utility complies with the Administrator's standards for service in effect on the effective date of this Act or as subsequently revised.

(5) The Administrator shall include in contracts executed in accordance with this subsection provisions that enable the Administrator to restrict his contractual obli-

gations to meet the loads referred to in this subsection in the future if the Administrator determines, after a reasonable period of experience under this Act, that the Administrator cannot be assured on a planning basis of acquiring sufficient resources to meet such loads during a specified period of insufficiency. Any such contract with a public body, cooperative, or Federal agency shall specify a reasonable minimum period between a notice of restriction and the earliest date such restriction may be imposed.

(6) Contracts executed in accordance with this subsection with public body, cooperative, and Federal agency customers shall

(A) provide that the restriction referred to in paragraph (5) shall not be applicable to any such customers until the operating year in which the total of such customers' firm loads to be served by the Administrator equals or exceeds the firm capability of the Federal base system resources;

(B) not permit restrictions which would reduce the total contractual entitlement of such customers to an amount less than the firm capability of the Federal base system resources; and

(C) contain a formula for determining annually, on a uniform basis, each such customer's contractual entitlement to firm power during such a period of restriction, which formula shall not consider customer resources other than those the customer has determined, as of the effective date of this Act, to be used to serve its own firm loads.

The formula referred to in subparagraph (C) shall obligate the Administrator to provide on an annual basis only firm power needed to serve the portion of such customer's firm load in excess of the capability of such customer's own firm resources determined by such customer under paragraph (1) to be used to serve its firm load.

(c)(1) Whenever a Pacific Northwest electric utility offers to sell electric power to the Administrator at the average system cost of that utility's resources in each year, the Administrator shall acquire by purchase such power and shall offer, in exchange, to sell an equivalent amount of electric power to such utility for resale to that utility's residential users within the region.

(2) The purchase and exchange sale referred to in paragraph (1) with any electric utility shall be limited to an amount not in excess of 50 per centum of such utility's regional residential load in the year beginning July 1, 1980, such 50 per centum limit increasing in equal annual increments to 100 per centum of such load in the year beginning July 1, 1985, and each year thereafter.

(3) The cost benefits, as specified in contracts with the Administrator, of any purchase and exchange sale referred to in paragraph (1) which are attributable to any electric utility's residential load within a State shall be passed through directly to such utility's residential loads within such State, except that a State which lies partially within and partially without the region may require that such cost benefits be distributed among all of the utility's residential loads in that State.

(4) An electric utility may terminate, upon reasonable terms and conditions agreed to by the Administrator and such utility prior to such termination, its purchase and sale under this subsection if the supplemental rate charge provided for in section 7(b)(3) is applied and the cost of electric power sold to such utility under this subsection exceeds, after application of such rate charge, the average system cost of power sold by such utility to the Administrator under this subsection.

(5) Subject to the provisions of sections 4 and 6, in lieu of purchasing any amount of electric power offered by a utility under paragraph (1), the Administrator may acquire an equivalent amount of electric power from other sources to replace power sold to such utility as part of an exchange sale if the cost of such acquisition is less than the cost of purchasing the electric power offered by such utility.

(6) Exchange sales to a utility pursuant to this subsection shall not be restricted below the amounts of electric power acquired by the Administrator from, or on behalf of, such utility pursuant to this subsection.

(7) The "average system cost" for electric power sold to the Administrator under this subsection shall be determined by the Administrator on the basis of a methodology developed for this purpose in consultation with the Council, the Administrator's customers, and appropriate State regulatory bodies in the region. Such methodology shall be subject to review and approval by the Federal Energy Regulatory Commission. Such average system cost shall not include—

(A) the cost of additional resources in an amount sufficient to serve any new large single load of the utility;

(B) the cost of additional resources in an amount sufficient to meet any additional load outside the region occurring after the effective date of this Act; and

(C) any costs of any generating facility which is terminated prior to initial commercial operation.

(d)(1)(A) The Administrator is authorized to sell in accordance with this subsection electric power to existing direct service industrial customers. Such sales shall provide a portion of the Administrator's reserves for firm power loads within the region.

(B) After the effective date of this Act, the Administrator shall offer in accordance with subsection (g) to each existing direct service industrial customer an initial long-term contract that provides such customer an amount of power equivalent to that to which such customer is entitled under its contract dated January or April 1975 providing for the sale of "industrial firm power".

(2) The Administrator shall not sell electric power, including reserves, directly to new direct service industrial customers.

(3) The Administrator shall not sell amounts of electric power, including reserves, to existing direct service industrial customers in excess of the amount permitted under paragraph (1) unless the Administrator determines that such proposed sale is consistent with the plan and that—

(A) additional power system reserves are required for the region's firm loads,

(B) the proposed sale would provide a cost-effective method of supplying such reserves,

(C) such loads or loads of similar character cannot provide equivalent operating or planning benefits to the region if served by an electric utility under contractual arrangements providing reserves, and

(D) the Administrator has or can acquire sufficient electric power to serve such loads, and

unless the Council has approved such sale by majority vote. After such determination and approval, the Administrator is authorized to offer to existing direct service industrial customers power in such amounts in excess of the amount permitted under paragraph (1) as the Administrator determines to be necessary to provide additional power system reserves to meet the region's firm loads.

(4)(A) As used in this section, the term "existing direct service industrial customer" means any direct service industrial customer of the Administrator which has a contract for the purchase of electric power from the Administrator on the effective date of this Act and which has before such effective date received electric power from the Administrator pursuant to such contract.

(B) The term "new direct service industrial customer" means any industrial entity other than an existing direct service industrial customer.

(e)(1) The contractual entitlement to firm power of any customer from whom, or on whose behalf, the Administrator has acquired electric power pursuant to section 6 may not be restricted below the amount of electric power so acquired from, or on behalf of, such customer. If in any year such customer's requirements are less than such entitlement, any excess of such entitlement shall be first made available to increase the entitlement of other customers of the same class before being available for the entitlement of other customers. For purposes of this paragraph, the following entities shall each constitute a class:

(A) public bodies and cooperatives;

(B) Federal agencies;

(C) direct service industrial; and

(D) investor-owned utilities.

(2) Any contractual entitlement to firm power which is based on electric power acquired from, or on behalf of, a customer pursuant to section 6 shall be in addition to any other contractual entitlement to firm power not subject to restriction that such customer may have under this section. For the purposes of this subsection, references to amounts of power acquired by the Administrator pursuant to section 6 shall be deemed to mean the amounts specified in the resource acquisition contracts exclusive of any amounts recognized in such contracts as replacement for Federal base system resources.

(3) The Administrator shall, consistent with the provisions of this Act, insure that any restrictions upon any particular customer class made pursuant to this subsection and subsection (b) are distributed equitably throughout the region.

(f) The Administrator is authorized to sell, or otherwise dispose of, electric power, including power acquired pursuant to this and other Acts, that is surplus to his obligations incurred pursuant to subsection (b), (c), and (d) of this section in accordance with this and other Acts applicable to the Administrator, including the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), and the Act of August 31, 1964 (16 U.S.C. 837-837h).

(g)(1) As soon as practicable within nine months after the effective date of this Act, the Administrator shall commence necessary negotiations for, and offer, initial long-term contracts (within the limitations of the third sentence of section 5(a) of the Bonneville Project Act) simultaneously to—

(A) existing public body and cooperative customers and investor-owned utility customers under subsection (b);

(B) Federal agency customers under subsection (b);

(C) electric utility customers under subsection (c); and

(D) direct service industrial customers under subsection (d)(1).

(2) Each customer offered a contract pursuant to this subsection shall have one year from the date of such offer to accept such contract. Such contract shall be effective as provided in this subsection.

(3) An initial contract with a public body, cooperative, or investor-owned electric utility customer or a Federal agency customer pursuant to subsection (b) shall be effective on the date executed by such customer, unless another effective date is otherwise agreed to by the Administrator and the customer.

(4) An initial contract with an electric utility customer pursuant to subsection (c) shall be effective on the date executed by such customer, but no earlier than the first day of the tenth month after the effective date of this Act.

(5) An initial contract with a direct service industrial customer pursuant to subsection (d)(1) shall be effective on the date agreed upon by the Administrator and such customer, but no later than the first day of the tenth month after the effective date of this Act. When such contract is executed, it may for rate purposes be given retroactive effect to such first day.

(6) Initial contracts offered public body, cooperative, and Federal agency customers in accordance with this subsection shall provide that during a period of insufficiency declared in accordance with subsection (b) each customer's contractual entitlement shall, to the extent of its requirements on the Administrator, be no less than the amount of firm power received from the Administrator in the year immediately preceding the period of insufficiency.

(7) The Administrator shall be deemed to have sufficient resources for the purpose of entering into the initial contracts specified in paragraph (1) (A) through (D).

CONSERVATION AND RESOURCE ACQUISITION

SEC. 6. (a) The Administrator shall acquire such resources, through conservation, implement all such conservation measures, and acquire such renewable resources which are installed by a residential or small commerical consumer to reduce load, as the Administrator determines are consistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) and, in the case of major resources, in accordance with subsection (c). Such conservation measures and such resources may include, but are not limited to—

(1) loans and grants to consumers for insulation or weatherization, increased system efficiency, and waste energy recovery by direct application,

(2) technical and financial assistance to, and other cooperation with, the Administrator's customers and governmental authorities to encourage maximum cost-effective voluntary conservation and the attainment of any cost-effective conservation objectives adopted by individual States or subdivisions thereof,

(3) aiding the Administrator's customers and governmental authorities in implementing model conservation standards adopted pursuant to section 4(f), and

(4) conducting demonstration projects to determine the cost effectiveness of conservation measures and direct application of renewable energy resources.

(b)(1) In addition to electric power acquired under subsection 5(c) or on a short-term basis pursuant to section 11(b)(6)(i) of the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), the Adminstrator, without considering restrictions which may apply pursuant to subsection 5(b), shall meet his contractual obligations and his obligations to protect, mitigate and enhance fish and wildlife under section 4(h)(2) that remain after taking into account planned savings from measures provided for in subsection (a) by acquiring sufficient resources.

(2) Except as specifically provided in this section, acquisition of resources under this Act shall be consistent with the plan or, if no plan is in effect, consistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) both as determined by the Administrator, and, in the case of major resources, in accordance with subsection (c).

(3) The Administrator shall acquire any non-Federal resources to replace Federal base system resources only in accordance with the provisions of this section. The Administrator shall include in the contracts for the acquisition of any such non-Federal replacement resources provisions that will enable him to ensure that such non-Federal replacement resources are developed and operated in a manner consistent with the factors specified in section 4(e)(2) of this Act.

(4) Notwithstanding any acquisition of resources pursuant to this section, the Administrator shall not reduce his efforts to acquire and implement conservation and acquire renewable resources pursuant to subsection (a).

(5) In making any payment to an investor-owned utility for the acquisition under this subsection of any resource as defined by section 3(19)(A), or for the exchange of

power under section 5(c), the Administrator shall exclude the costs of construction work in progress.

(c)(1) For each proposal under subsection (a), (b), (f), (h), or (l) to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, the Administrator shall—

(A) publish notice of the proposed action in the Federal Register and provide a copy of such notice to the Council, the Governor of each State in which facilities would be constructed or a conservation measure implemented, and the Administrator's customers;

(B) not less than sixty days following publication of such notice, conduct one or more public hearings, presided over by a hearing officer, at which testimony and evidence shall be received, with opportunity for such rebuttal and cross-examination as the hearing officer deems appropriate in the development of an adequate hearing record;

(C) develop a record to assist in evaluating the proposal which shall include the transcript of the public hearings, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator; and

(D) following completion of such hearings, promptly provide to the Council and make public a written decision that includes, in addition to a determination respecting the requirements of subsection (a), (b), (f), (h), (l), or (m), as appropriate—

(i) if a plan is in effect, a finding that the proposal is either consistent or inconsistent with the plan or, notwithstanding its inconsistency with the plan, a finding that it is needed to meet the Administrator's obligations under this Act, or

(ii) if no plan is in effect, a finding that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) or, notwithstanding its inconsistency, a finding that it is needed to meet the Administrator's obligations under this Act.

In the case of subsection (f), such decision shall be treated as satisfying the requirements of this subsection, if it includes a finding of probable consistency, based upon the Administrator's evaluation of information available at the time of completion of the hearing under this paragraph. Such decision shall include the reasons for such finding.

(2) Within sixty days after receipt of the Administrator's decision pursuant to paragraph (1)(D), the Council may determine by a majority vote of all members of the Council, and notify the Administrator, that the proposal is either consistent or inconsistent with the plan, or, if no plan is in effect, that the proposal is either consistent or inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2): Provided, That the Council's authority to make consistency determinations if no plan is in effect shall cease upon the adoption of a plan or the expiration of two years from the effective date of this Act, whichever is earlier.

(3) The Administrator may not implement any proposal referred to in paragraph (1) that is determined by either the Administrator or the Council to be inconsistent with the plan or, if no plan is in effect, with the criteria of section 4(e)(1) and the considerations of section 4(e)(2) unless (A) the Administrator determines that the resource is needed to meet the Administrator's contractual obligations under section 5 without considering restrictions which may apply pursuant to section 5(b), and (B) the expenditure of funds for that purpose has been specifically authorized by legislation enacted by the Congress pursuant to bills reported from the committees of Congress having jurisdiction, under the applicable rules of the respective Houses of Congress, over substantive amendments to the Federal Columbia River Transmission System Act and the Bonneville Project Act.

(4) Before the Administrator implements any proposal referred to in paragraph (1), the Administrator shall—

(A) submit to the appropriate committees of the Congress the administrative record of the decision (including any determination by the Council under paragraph (2)) and a statement of the procedures followed or to be followed for compliance with the National Environmental Policy Act of 1969,

(B) publish notice of the decision in the Federal Register, and

(C) note the proposal in the Administrator's annual or supplementary budget submittal made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following).

The Administrator may not implement any such proposal until ninety days after the date of publication in the Federal Register.

(d) The Administrator is authorized to acquire a resource, other than a major resource, whether or not such resource meets the criteria of section 4(e)(1) and the considerations of section 4(e)(2) but which he determines is an experimental, developmental, demonstration, or pilot project of a type with a potential for providing cost-effective service to the region. The Administrator shall make no obligation for the acquisition of such resource until it is included in the annual budgets submitted to the Congress pursuant to the Federal Columbia River Transmission System Act.

(e)(1) In order to effectuate the priority given to conservation measures and renewable resources under this Act, the Administrator shall, to the maximum extent practicable, make use of his authorities under this Act to acquire conservation measures and renewable resources, to implement conservation measures, and to provide credits and technical and financial assistance for the development and implementation of such resources and measures (including the funding of, and the securing of debt for, expenses incurred during the investigation and preconstruction of resources, as authorized in subsection (f)).

(2) To the extent conservation measures or acquisition of resources require direct arrangements with consumers, the Administrator shall make maximum practicable use of customers and local entities capable of administering and carrying out such arrangements.

(f)(1) For resources which the Administrator determines may be eligible for acquisition under this section and satisfy the criteria of section 4(e)(1) and the considerations of section 4(e)(2) or, if a plan is in effect, to be consistent with the plan, the Administrator is authorized to enter into agreements with sponsors of—

(A) a renewable resource, other than a major resource, to fund or secure debt incurred in the investigation and initial development of such resource, or

(B) any other resource to provide for the reimbursement of the sponsor's investigation and preconstruction expenses concerning such resource (which expenses shall not include procurement of capital equipment or construction material for such resource).

In the case of any resource referred to in subparagraph (B), such reimbursement is authorized only if—

(i) such resource is subsequently denied State siting approval or other necessary Federal or State permits, or approvals,

(ii) such investigation subsequently demonstrates, as determined by the Administrator, that such resource does not meet the critjera of section 4(e)(1) and the considerations of section 4(e)(2) or is not acceptable because of environmental impacts, or

(iii) after such investigation the Administrator determines not to acquire the resource and the sponsor determines not to construct the resource.

(2) The Administrator may exercise the authority of this subsection only if he does not foresee termination of the resource. If the Administrator reasonably foresees that certain actions of the resource sponsors may lead to termination of the resource, he shall specify such actions with particularity in the agreement and shall exclude reimbursement if the resource sponsors take such actions. In no event shall the Administrator agree to reimburse expenses incurred prior to the effective date of this Act or of the agreement.

(3) Any agreement under paragraph (1) shall provide the Administrator an option to acquire any such resource, including a renewable resource, and shall include such other provisions, as the Administrator deems appropriate, for the Administrator's recovery from such sponsors or any assignee of the sponsors, if such sponsor or assignee continues development of the resource, of any advances made by the Administrator pursuant to such agreement.

(4) The Administrator shall not reimburse any expense incurred by the sponsors (except necessary expenses involved in the liquidation of the resource) after the date of a final denial of application for State siting approval or after the date the Administrator determines that the resource to be inconsistent with the plan or the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(g) At the request of the appropriate State, any environmental impact statement which may be required with respect to a resource, to the extent determined possible by the Administrator in accordance with applicable law and regulations, may be prepared jointly and in coordination with any required environmental impact statement of the State or any other statement which serves the purpose of an environmental impact statement which is required by State law.

(h)(1) If a customer so requests, the Administrator shall grant billing credits to such customer, and provide services to such customer at rates established for such services, for—

(A) conservation activities independently undertaken or continued after the effective date of this Act by such customer or political subdivision served by such customer which reduce the obligation of the Administrator that would otherwise have existed to acquire other resources under this Act, or

(B) resources constructed, completed, or acquired after the effective date of this Act by a customer, an entity acting on behalf of such customer, or political subdivision served by the customer which reduce the obligation of the Administrator to acquire resources under this Act. Such resources shall be renewable resources or multipurpose projects or other resources which are not inconsistent with the plan or, in the absence of a plan, not inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(2) The energy and capacity on which a credit under this subsection to a customer is based shall be the amount by which a conservation activity or resource actually changes the customer's net requirement for supply of electric power or reserves from the Administrator.

(3) The amount of credits for conservation under this subsection shall be set to credit the customer implementing or continuing the conservation activity for which the credit is granted for the savings resulting from such activity. The rate impact on the Administrator's other customers of granting the credit shall be equal to the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually saved by the activity for which the credit is granted.

(4) For resources other than conservation, the customer shall be credited for net costs actually incurred by such customer, an entity acting on behalf of such customer, or political subdivision served by such customer, in acquiring, constructing, or operating the resource for which the credit is granted. The rate impact to the Administrator's other customers of granting the credit shall be no greater than the rate impact such customers would have experienced had the Administrator been obligated to acquire resources in an amount equal to that actually produced by the resource for which the credit is granted.

(5) Retail rate structures which are voluntarily implemented by the Administrator's customers and which induce conservation or installation of consumer-owned renewable resources shall be considered, for purposes of this subsection, to be (A) conservation activities independently undertaken or carried on by such customers, or (B) customer-owned renewable resources, and shall qualify for billing credits upon the same showing as that required for other conservation or renewable resource activities.

(6) Prior to executing a contract for any billing credit or related services pursuant to this subsection, the Administrator shall—

(A) Comply with the notice and hearing provisions of subsection (c), and include in such notice the methodology the Administrator proposes to use in determining the amount of any such credit;

(B) Include the cost of such credit in the Administrator's annual or amended budget submittal to the Congress made pursuant to the Federal Columbia River Transmission System Act (16 U.S.C. 838(j));

(C) Include in such contract provisions to ensure that resources in excess of a customer's reasonable load growth shall have been offered to others for ownership, participation or other sponsorship pursuant to subsection (m), except in the case of conservation, multipurpose projects uniquely suitable for development by the customer, or renewable resources; and

(D) Include in such contract provisions to ensure that the operators of any generating resource for which a billing credit is to be granted agree to operate such resource in a manner compatible with the planning and operation of the region's power system.

(i) Contracts for the acquisition of resources and for billing credits for major resources, including conservation activities, entered into pursuant to this section shall contain such terms and conditions, applicable after the contract is entered into, as will—

(1) insure timely construction, scheduling, completion, and operation of resources,

(2) insure that the costs of any acquisition are as low as reasonably possible, consistent (A) with sound engineering, operating, and safety practices and (B) the protection, mitigation, and enhancement of fish and wildlife, including related spawning grounds and habitat, affected by the development of such resources, and

(3) insure that the Administrator exercises effective oversight, inspection, audit, and review of all aspects of such construction and operation, including environmental protection.

Such contracts shall contain provisions assuring that the Administrator has the authority to approve all costs of and proposals for, major modifications in construction, scheduling, or operations and to assure that the Administrator is provided with such current information as he deems necessary to evaluate such construction and operation.

(j)(1) All contractual and other obligations required to be carried out by the Administrator pursuant to this Act shall be secured solely by the Administrator's revenues received from the sale of electric power and other services. Such obligations are not, nor shall they be construed to be, general obligations of the United States, nor are such obligations intended to be or are they secured by the full faith and credit of the United States.

(2) All contracts entered into by the Administrator for the acquisition of resources pursuant to this Act shall require that, in the sale of any obligations, all offerings and promotional material for the sale of such obligations shall include the language contained in the second sentence of paragraph (1). The Administrator shall monitor and enforce such requirement.

(k) In the exercise of his authorities pursuant to this section, the Administrator shall, consistent with the provisions of this Act and the Administrator's obligations to particular customer classes, insure that benefits under this section, including financial and technical assistance, conduct of conservation demonstrations, and experimental projects, services, and billing credits, are distributed equitably throughout the region.

(l)(1) The Administrator is authorized and directed to investigate opportunities for adding to the region's resources or reducing the region's power costs through the accelerated or cooperative development of resources located outside the States of Idaho, Montana, Oregon, and Washington if such resources are renewable resources, and are now or in the future planned or considered for eventual development by nonregional agencies or authorities that will or would own, sponsor, or otherwise develop them. The Administrator shall keep the Council fully and currently informed of such investigations, and seek the Council's advice as to the desirability of pursuing such investigations.

(2) The Administrator is authorized and directed to investigate periodically opportunities for mutually beneficial interregional exchanges of electric power that reduce the need for additional generation or generating capacity in the Pacific Northwest and the regions with which such exchanges may occur. The Council shall take into consideration in formulating a plan such investigations.

(3) After the Administrator submits a report to Congress pursuant to paragraph (5), the Administrator is authorized to acquire resources consistent with such investigations and consistent with the plan or, if no plan is in effect, with the priorities of section 4(e)(1) and the considerations of section 4(e)(2). Such acquisitions shall be in accordance with the provisions of this section.

(4) The Administrator shall conduct the investigations and the acquisitions, if any, authorized under this subsection with the assistance of other Federal agencies as may be appropriate.

(5) No later than July 1, 1981, the Administrator shall submit to the Congress a report of the result of the investigations undertaken pursuant to this subsection, together with the prospects for obtaining additional resources under the authority granted by this subsection and for reductions in generation or generating capacity through exchanges.

(m) Except as to resources under construction on the effective date of this Act, the Administrator shall determine in each case of a major resource acquisition that a reasonable share of the particular resource, or a reasonable equivalent, has been offered to each Pacific Northwest electric utility for ownership, participation, or other sponsorship, but not in excess of the amounts needed to meet such utility's regional load.

(n) The Council may authorize the Administrator to implement a proposal not subject to the provisions of section 6(c)(1) upon satisfaction of the requirements of section 6(c)(4) notwithstanding a finding by the Administrator that such proposal is inconsistent with the plan, or, if no plan is in effect, inconsistent with the criteria of section 4(e)(1) and the considerations of section 4(e)(2).

(o) The Council or any customer of the Administrator may request the Administrator to take action under section 6 to carry out his responsibilities under this section. Within 60 days of the receipt of such request, the Administrator shall respond in writing either that he will propose the action and will initiate the procedures of this section in order to review the action, or that he will not propose the action and the reasons why such action would not be timely or would not be consistent with the plan or with the Administrator's obligations under this Act or other provisions of law which the Administrator shall specifically identify.

RATES

SEC. 7. (a)(1) The Administrator shall establish, and periodically review and revise, rates for the sale and disposition of electric energy and capacity and for the transmission of non-Federal power. Such rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law. Such rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838), section 5 of the Flood Control Act of 1944, and the provisions of this Act.

(2) Rates established under this section shall become effective only upon confirmation and approval by the Federal Energy Regulatory Commission upon a finding by the Commission, that such rates—

(A) are sufficient to assure repayment of the Federal investment in the Federal Columbia River Power System over a reasonable number of years after first meeting the Administrator's other costs,

(B) are based upon the Administrator's total system costs, and

(C) insofar as transmission rates are concerned, equitably allocate the costs of the Federal transmission system between Federal and non-Federal utilizing such system.

(b)(1) The Administrator shall establish a rate or rates of general application for electric power sold to meet the general requirements of public body, cooperative, and Federal agency customers within the Pacific Northwest, and loads of electric utilities under section 5(c). Such rate or rates shall recover the costs of that portion of the Federal base system resources needed to supply such loads until such sales exceed the Federal base system resources. Thereafter, such rate or rates shall recover the cost of additional electric power as needed to supply such loads, first from the electric power acquired by the Administrator under section 5(c) and then from other resources.

(2) After July 1, 1985, the projected amounts to be charged for firm power for the combined general requirements of public body, cooperative, and Federal agency customers, exclusive of amounts charged such customers under subsection (g) for the costs of conservation, resource and conservation credits, experimental resources, and uncontrollable events, may not exceed in total, as determined by the Administrator, during any year after July 1, 1985, plus the ensuing four years, an amount equal to the power costs for general requirements of such customers if, the Administrator assumes that—

(A) the public body and cooperative customers' general requirements had included during such five-year period the direct service industrial customer loads which are—

(i) served by the Administrator, and

(ii) located within or adjacent to the geographic service boundaries of such public bodies and cooperatives;

(B) public body, cooperative, and Federal agency customers were served, during such five-year period, with Federal base system resources not obligated to other entities under contracts existing as of the effective date of this Act (during the remaining term of such contracts) excluding obligations to direct service industrial customer loads included in subparagraph (A);

(C) no purchases or sales by the Administrator as provided in section 5(c) were made during such five-year period;

(D) all resources that would have been required, during such five-year period, to meet remaining general requirements of the public body, cooperative and Federal agency customers (other than requirements met by the available Federal base system resources determined under subparagraph (B)) were—

(i) purchased from such customers by the Administrator pursuant to section 6, or

(ii) not committed to load pursuant to section 5(b),

and were the least expensive resources owned or purchased by public bodies or cooperatives; and any additional needed resources were obtained at the average cost of all other new resources acquired by the Administrator; and

(E) the quantifiable monetary savings, during such five-year period, to public body, cooperative, and Federal agency customers resulting from—

(i) reduced public body and cooperative financing costs as applied to the total amount of resources, other than Federal base system resources, identified under subparagraph (D), and

(ii) reserve benefits as a result of the Administrator's actions under this Act

were not achieved.

(3) Any amounts not charged to public body, cooperative, and Federal agency customers by reason of paragraph (2) shall be recovered through supplemental rate charges for all other power sold by the Administrator to all customers. Rates charged public body, cooperative, or Federal agency customers pursuant to this subsection shall not include any costs or benefits of a net revenue surplus or deficiency occurring for the period ending June 30, 1985, to the extent such surplus or deficiency is caused by—

(A) a difference between actual power deliveries and power deliveries projected for the purpose of establishing rates to direct service industrial customers under subsection (c)(1), and

(B) an overrecovery or underrecovery of the net costs incurred by the Administrator under section 5(c) as a result of such difference.

Any such revenue surplus or deficiency incurred shall be recovered from, or repaid to, customers over a reasonable period of time after July 1, 1985, through a supplemental rate charge or credit applied proportionately for all other power sold by the Administrator at rates established under other subsections of this section prior to July 1, 1985.

(4) The term "general requirements" as used in this section means the public body, cooperative, or Federal agency customer's electric power purchased from the Administrator under section 5(b), exclusive of any new large single load.

(c)(1) The rate or rates applicable to direct service industrial customers shall be established—

(A) for the period prior to July 1, 1985, at a level which the Administrator estimates will be sufficient to recover the cost of resources the Administrator determines are required to serve such customers' load and the net costs incurred by the Administrator pursuant to section 5(c), based upon the Administrator's projected ability to make power available to such customers pursuant to their contracts, to the extent that such costs are not recovered through rates applicable to other customers; and

(B) for the period beginning July 1, 1985, at a level which the Administrator determines to be equitable in relation to the retail rates charged by the public body and cooperative customers to their industrial consumers in the region.

(2) The determination under paragraph (1)(B) shall be based upon the Administrator's applicable wholesale rates to such public body and cooperative customers and the typical margins included by such public body and cooperative customers in their retail industrial rates but shall take into account—

(A) the comparative size and character of the loads served,

(B) the relative costs of electric capacity, energy, transmission, and related delivery facilities provided and other service provisions, and

(C) direct and indirect overhead costs,

all as related to the delivery of power to industrial customers, except that the Administrator's rates during such period shall in no event be less than the rates in effect for the contract year ending on June 30, 1985.

(3) The Administrator shall adjust such rates to take into account the value of power system reserves made available to the Administrator through his rights to interrupt or curtail service to such direct service industrial customers.

(d)(1) In order to avoid adverse impacts on retail rates of the Administrator's customers with low-system densities, the Administrator shall, to the extent appropriate, apply discounts to the rate or rates for such customers.

(2) In order to avoid adverse impacts on direct service industrial customers using raw materials indigenous to the region as their primary resource, the Administrator is authorized to establish a special rate applicable to such customer if all power sold to such customer may be interrupted, curtailed, or withdrawn to meet firm loads in the region.

(e) Nothing in this Act prohibits the Administrator from establishing, in rate schedules of general application, a uniform rate or rates for sale of peaking capacity or from establishing time-of-day, seasonal rates, or other rate forms.

(f) Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of Federal base system resources, purchases of power under section 5(c), and additional resources which, in the determination of the Administrator, are applicable to such sales.

(g) Except to the extent that the allocation of costs and benefits is governed by provisions of law in effect on the effective date of this Act, or by other provisions of this section, the Administrator shall equitably allocate to power rates, in accordance with generally accepted ratemaking principles and the provisions of this Act, all costs and benefits not otherwise allocated under this section, including, but not limited to, conservation, fish and wildlife measures, uncontrollable events, reserves, the excess costs of experimental resources acquired under section 6, the cost of credits granted pursuant to section 6, operating services, and the sale of or inability to sell excess electric power.

(h) Notwithstanding any other provision of this section (except the provisions of subsection (a)), the Administrator shall adjust power rates to include any surcharges arising under section 4(f), and shall allocate any revenues from such charges in such manner as the Administrator determines will help achieve the purposes of section 4(f).

(i) In establishing rates under this section, the Administrator shall use the following procedures:

(1) Notice of the proposed rates shall be published in the Federal Register with a statement of the justification and reasons supporting such rates. Such notice shall include a date for a hearing in accordance with paragraph (2).

(2) One or more hearings shall be conducted as expeditiously as practicable by a hearing officer to develop a full and complete record and to receive public comment in the form of written or oral presentation of views, data, questions, and argument related to such proposed rates. In any such hearing—

(A) any person shall be provided an adequate opportunity by the hearing officer to offer refutation or rebuttal of any material submitted by any other person or the Administrator, and

(B) the hearing officer shall allow for cross-examination to develop information and material relevant to any such proposed rate.

(3) In addition to the opportunity to submit oral and written material at the hearings, any written views, data, questions, and arguments submitted by persons prior to, or before, the close of hearings shall be made a part of the administrative record.

(4) After such a hearing, the Administrator may propose revised rates, publish such proposed rates in the Federal Register, and conduct additional hearings in accordance with this subsection.

(5) The Administrator shall make a final decision establishing a rate or rates based on the record which shall include the hearing transcript, together with exhibits, and such other materials and information as may have been submitted to, or developed by, the Administrator. The decision shall include a full and complete justification of the final rates pursuant to this section.

(6) The final decision of the Administrator shall become effective on confirmation and approval of such rates by the Federal Energy Regulatory Commission pursuant to subsection (a)(2). The Commission shall have the authority, in accordance with such procedures as the Commission may establish, to approve the final rate submitted by the Administrator on an interim basis, pending the Commission's final decision in accordance with such subsection: *Provided*, That, until the Commission has established appropriate procedures for interim approval, the Secretary shall have authority to approve on an interim basis final rates submitted by the Administrator.

(j) All rate schedules adopted, and all power billings rendered, by the Administrator pursuant to this section shall indicate—

(1) the approximate cost contribution of different resource categories to the Administrator's rates for the sale of energy and capacity, and

(2) the cost of resources acquired to meet load growth within the region and the relation of such cost to the average cost of resources available to the Administrator.

(k) Notwithstanding any other provision of this Act, all rates or rate schedules for the sale of nonfirm electric power within the United States, but outside the region, shall be established after the date of this Act by the Administrator in accordance with the procedures of subsection (i) of this section (other than the first sentence of paragraph (6) thereof) and in accordance with the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act. Notwithstanding section 201(f) of the Federal Power Act, such rates or rate schedules shall become effective after review by the Federal Energy Regulatory Commission for conformance with the requirements of such Acts and after approval thereof by the Commission. Such review shall be based on the record of proceedings established under subsection (i) and this subsection. The parties to such proceedings under subsection (i) shall be afforded an opportunity by the Commission for an additional hearing in accordance with the procedures established for ratemaking by the Commission pursuant to the Federal Power Act.

(l) In order to further the purposes of this Act and to protect the consumers of the region, the Administrator may negotiate, or establish, rates for electric power sold by the Administrator to any entity not located in the United States which shall be equitable in relation to rates for all electric power which is, or may be, purchased by the Administrator or the Administrator's customers from entities outside the United States. In establishing rates other than by negotiation, the provisions of subsection (i) shall apply. In the case of any negotiation with an entity not located in the United States, the Administrator shall provide public notice of any proposal to negotiate such rates. Such negotiated rates shall be not less than the rates established under this Act for nonfirm power sold within the United States but outside the region. The Administrator shall also afford notice of any rates negotiated pursuant to this subsection.

AMENDMENTS TO EXISTING LAW

SEC. 8. (a) Section 11(b) of the Federal Columbia River Transmission System Act (16 U.S.C. 837) is amended by striking out the semicolon at the end of paragraph (6) and inserting in lieu thereof ", or (iv) on a short term basis to meet the Administrator's obligations under section 4(h)(2) of the Pacific Northwest Electric Power Planning and Conservation Act;".

(b) Section 11(b) of the Federal Columbia River Transmission System Act (16 U.S.C. 838) is amended by striking out "and" at the end of paragraph (10), by striking out the period at the end of paragraph (11) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

> "(12) making such payments, as shall be required to carry out the purposes and provisions of the Pacific Northwest Electric Power Planning and Conservation Act.".

(c) Subsection (b) of section 13 of such Act is amended by striking out "and 11(b)(11)" and inserting in lieu thereof ", 11(b)(11), and 11(b)(12)".

(d)(1) The first sentence of subsection (a) of section 13 of such Act is amended by inserting "(1)" after "is authorized", by inserting after the word "system," the following: "and to implement the Administrator's authority pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (including his authority to provide financial assistance for conservation measures, renewable resources, and fish and wildlife, but not including the authority to acquire under section 6 of that Act electric power from any generating facility not utilizing a renewable resource or from a generating facility utilizing a renewable resource and having a planned capability greater than fifty average megawatts),", and by inserting "(2)" before "to issue and sell bonds to refund such bonds".

(2) The fourth sentence of such subsection (a) is amended by inserting the following before the period at the end thereof: "issued by Government corporations. Based on information provided by the Administrator to the Secretary of the Treasury, the interest rate determined pursuant to the immediately preceding sentence will be increased by 1 per centum thereof for each immediately preceding consecutive fiscal year, beginning with the fiscal year in which this Act becomes effective, that the applicable financial reports, including current repayment studies, of the Administrator show repayment criteria not being met".

(3) Such subsection (a) is further amended by inserting the following before the period at the end thereof: "prior to October 1, 1981. Such aggregate principal limitation shall be increased by an additional $1,250,000,000 after October 1, 1981, as provided in advance in annual appropriation Acts, and such increased amount shall be reserved for the purpose of providing funds for conservation and renewable resource loans and grants in a special revolving account created therefor in the Fund. The funds from such revolving account shall not be deemed State or local funds".

(e) Clause (2) of section 1(b) of the Act of August 31, 1964 (78 Stat. 756) is amended to read as follows: "(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a rural electric cooperative served by the Administrator on the effective date of the Pacific Northwest Electric Power Planning and Conservation Act which has a distribution system from which it serves both within and without said region.".

(f) Section 7 of the Federal Columbia River Transmission System Act is amended by inserting "(a)" after "7" and by adding the following new subsection at the end thereof:

"(b)(1) From amounts available to the Administrator from the fund under section 11(b)(2), the Administrator shall make annual impact aid payments to State and local governments having within their jurisdiction the transmission facilities described in paragraph (2). The Administrator may also make impact aid payments to State and local governments with respect to transmission facilities of the Administrator other than those described in paragraph (2) where the construction of such facilities, or any substantial modification thereof, is completed after the date of enactment of the Pacific Northwest Electric Power Planning and Conservation Act and the Administrator determines that such facilities have a substantial impact on the State and local government concerned.

"(2) The transmission facilities for which payments shall be made under this subsection are any major transmission facilities—

"(A) which are owned by the Bonneville Power Administration;

"(B) which are exempt from State and local real property taxes; and

"(C) initial construction of which was completed after the date of the enactment of the Pacific Northwest Electric Power Planning and Conservation Act.

"(3)(A) The payments made under this subsection for any year shall be determined on the basis of a regionwide formula established by the Administrator by rule, after notice and opportunity for public hearing and after consultation with State and local governments in the region and the Administrator's customers in the region. Such formula shall provide for an annual payment based on (i) the amount of land and interests in land acquired by the Administrator for purposes of constructing the facility, and the value of the facilities constructed thereon, and (ii) the costs of all governmental services related to the facility and an appropriate share of the general government expenses which are ordinarily paid from State and local real property taxes. No annual payment to any such State or local government may exceed such amount as the Administrator determines would be paid to such government during that year if the transmission facilities were not exempt from State and local real property taxation.".

ADMINISTRATIVE PROVISIONS

SEC. 9. (a) Subject to the provisions of this Act and the Bonneville Project Act, the Administrator is authorized to contract in accordance with section 2(f) of the Bonneville Project Act of 1937 (16 U.S.C. 832a(f)).

(b) The Administrator shall discharge the executive and administrative functions of his office in accordance with the policy established by the Bonneville Project Act of 1937 (16 U.S.C. 832 and following), sections 302(a) (2) and (3) of the Department of Energy Organization Act, and this Act. The Secretary of Energy, the Council, and the Administrator shall take such steps as are necessary to assure the timely implementation of this Act in a sound and businesslike manner.

(c) Any contract of the Administrator for the sale or exchange of electric power for outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 31, 1964 (16 U.S.C. 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the disposition of such energy, and the term "surplus peaking capacity" shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837e and 837f) shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this Act. The Administrator shall, in making any determination, under any contract executed pursuant to section 5, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm energy requirements of such customer or other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.

(d) No restrictions contained in subsection (c) shall limit or interfere with the sale, exchange, or other disposition of any power by any utility or group thereof from any existing or new non-Federal resource if such sale, exchange, or disposition does not increase the amount of firm power the Administrator would be obligated to provide to any customer. The Administrator, in addition to the directives contained in subsections (i)(1)(B) and (i)(3), and subject to any contractual obligations of the Administrator, or any other obligations under existing law, shall (1) provide transmission access, load factoring, storage and other services normally attendant thereto to such utilities and (2) shall not discriminate on the basis of independent development of resources against any utility or group thereof in providing such services.

(e)(1) For purposes of sections 701 through 706 of title 5, United States Code, the following actions shall be final actions subject to judicial review—

(A) adoption of the plan or amendments thereto by the Council under section 4, and adoption of the program by the Council under section 4(h);

(B) sales, exchanges, and purchases of electric power under section 5;

(C) the Administrator's acquisition of resources under section 6;

(D) implementation of conservation measures under section 6;

(E) execution of contracts for assistance to sponsors under section 6(f);

(F) granting of credits under section 6(h); and

(G) establishment of a regionwide formula under section 7(b)(3) of the Federal Columbia River Transmission System Act.

(2) The record upon review of such final actions shall be limited to the administrative record compiled in accordance with this Act. The scope of review of such actions without a hearing or after a hearing shall be governed by section 706 of title 5, United States Code. The scope of review of an action under section 6(c) shall be governed by section 706 of title 5, United States Code. Nothing in this section shall be construed to require a hearing pursuant to section 554 or 557 of title 5 of the United States Code.

(3) Nothing in this section shall be construed to preclude judicial review of other final actions and decisions by the Council or Administrator.

(4) For purposes of this subsection—

(A) major resources shall be deemed to be acquired upon publication in the Federal Register pursuant to section 6(c)(4)(B);

(B) resources, other than major resources, shall be deemed to be acquired upon execution of the contract therefor;

(C) conservation measures shall be deemed to be implemented upon execution of the contract or grant therefor; and

(D) rate determinations pursuant to section 7 shall be deemed final upon confirmation and approval by the Federal Energy Regulatory Commission.

(5) Suits to challenge final actions and decisions taken pursuant to this Act, or the implementation of such final actions, whether brought pursuant to this Act, the Bonneville Project Act, the Act of August 31, 1964 (16 U.S.C. 837–837h), or the Federal Columbia River Transmission System Act (16 U.S.C. 838 and following), shall be filed in the appropriate Federal court in the case of rates under section 7 and in the United States court of appeals for the region in the case of other actions or decisions subject to the provisions of this subsection. Such suits shall be filed within ninety days of the time such action or decision is deemed final, or, if notice of the action is required by this Act to be published in the Federal Register, within ninety days from such notice, or be barred. In the case of a challenge of the plan or amendments thereto, such suit shall be filed within sixty days after publication of a notice of such final action in the Federal Register. Such courts shall have jurisdiction to hear and determine any suit brought as provided in this section. The plan, as finally adopted or portions thereof, or amendments thereto, shall not thereafter be reviewable as a part of any other action under this Act or any other law administered by the Administrator.

(f) For purposes of enabling the Administrator to acquire resources necessary to meet the firm load of public bodies, cooperatives, and Federal agencies from a governmental unit at a cost no greater than the cost which would be applicable in the absence of such acquisition, the exemption from gross income of interest on certain governmental obligations provide in section 103(a)(1) of the Internal Revenue Code of 1954 shall not be affected by the Administrator's acquisition of such resources if—

(1) the Administrator, prior to contracting for such acquisition, certifies to his reasonable belief, that the persons for whom the Administrator is acquiring such resources for sale pursuant to section 5 of this Act are public bodies, cooperatives, and Federal agencies, unless the Administrator also certifies that he is unable to acquire such resources without selling a portion thereof to persons who are not exempt persons (as defined in section 103(b) of such Code), and

(2) based upon such certification, the Secretary of the Treasury determines in accordance with applicable regulations that less than a major portion of the resource is to be furnished to persons who are not exempt persons (as defined in section 103(b) of such Code).

The certification under paragraph (1) shall be made in accordance with this subsection and a procedure and methodology approved by the Secretary of the Treasury. For purposes of this subsection, the term "major portion" shall have the meaning provided by regulations issued by the Secretary of the Treasury.

(g) When reviewing rates for the sale of power to the Administrator by an investor-owned utility customer under section 5(c) or 6, the Federal Energy Regulatory Commission shall, in accordance with section 209 of the Federal Power Act (16 U.S.C. 824h)—

(1) convene a joint State board, and

(2) invest such board with such duties and authority as will assist the Commission in its review of such rates.

(h)(1) No "company" (as defined in section 2(a)(2) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(2)), which owns or operates facilities for the generation of electricity (together with associated transmission and other facilities) primarily for sale to the Administrator under section 6 shall be deemed an "electric utility company" (as defined in section 2(a)(3) of the Public Utility Holding Company Act of 1935; 15 U.S.C. 79b(a)(3)), within the meaning of any provision or provisions of chapter 2C of title 15 of the United States Code, if at least 90 per centum of the electricity generated by such company is sold to the Administrator under section 6, and if—

(A) the organization of such company is consistent with the policies of the Public Utility Holding Company Act of 1935, as determined by the Securities and Exchange Commission, with the concurrence of the Administrator, at the time of such organization; and

(B) participation in any facilities of such "company" has been offered to public bodies and cooperatives in the region pursuant to section 6(m).

(2) The Administrator shall include in any contract for the acquisition of a major resource from such "company" provisions limiting the amount of equity investment, if any, in such "company" to that which the Administrator determines will be consistent with achieving the lowest attainable power costs attributable to such major resource.

(3) In the case of any "company" which meets the requirements of paragraph (1), the Administrator, with the concurrence of such Commission, shall approve all significant contracts entered into by, and between, such "company" and any sponsor company or any subsidiary of such sponsor company which are determined to be consistent with the policy of the Public Utility Holding Company Act of 1935 at the time such contracts are entered into. The Administrator and the Securities and Exchange Commission shall exercise such approval authority within sixty days after receipt of such contracts. Such contracts shall not be effective without such approval.

(4) Paragraph (1) of this subsection shall continue to apply to any such "company" unless the Administrator or the Securities and Exchange Commission, or both, through periodic review, (A) determine at any time that the "company" no longer operates in a manner consistent with the policy of the Public Utility Holding Company Act of 1935 and in accordance with this subsection, and (B) notify the "company" in writing of such preliminary determination. This subsection shall cease to apply to such "company" thirty days after receipt of notification of a final determination thereof. A final determination shall be made only after public notice of the preliminary determination and after a hearing completed not later than sixty days from the date of publication of such notice. Such final determination shall be made within thirty days after the date of completion of such hearing.

(i)(1) At the request and expense of any customer or group of customers of the Administrator within the Pacific Northwest, the Administrator shall, to the extent practicable—

(A) acquire any electric power required by (i) any customer or group of customers to enable them to replace resources determined to serve firm load under section 5(b), or (ii) direct service industrial customers to replace electric power that is or may be curtailed or interrupted by the Administrator (other than power the Administrator is obligated to replace), with the cost of such replacement power to be distributed among the direct service industrial customers requesting such power; and

(B) dispose of, or assist in the disposal of, any electric power that a customer or group of customers proposes to sell within or without the region at rates and upon terms specified by such customer or group of customers, if such disposition is not in conflict with the Administrator's other marketing obligations and the policies of this Act and other applicable laws.

(2) In implementing the provisions of subparagraphs (A) and (B) of paragraph (1), the Administrator may prescribe policies and conditions for the independent acquisition or disposition of electric power by any direct service industrial customer or group of such customers for the purpose of assuring each direct service industrial customer an opportunity to participate in such acquisition or disposition.

(3) The Administrator shall furnish services including transmission, storage, and load factoring unless he determines such services cannot be furnished without substantial interference with his power marketing program, applicable operating limitations, or existing contractual obligations. The Administrator shall, to the extent practicable, give priority in making such services available for the marketing, within and without the Pacific Northwest, of capability from projects under construction on the effective date of this Act, if such capability has been offered for sale

at cost, including a reasonable rate of return, to the Administrator pursuant to this Act and such offer is not accepted within one year.

(j)(1) The Council, as soon as practicable after the enactment of this Act, shall prepare, in consultation with the Administrator, the customers, appropriate State regulatory bodies, and the public, a report and shall make recommendations with respect to the various retail rate designs which will encourage conservation and efficient use of electric energy and the installation of consumer-owned renewable resources on a cost-effective basis, as well as areas for research and development for possible application to retail utility rates within the region. Studies undertaken pursuant to this subsection shall not affect the responsibilities of any customer or the Administrator which may exist under the Public Utility Regulatory Policies Act of 1978.

(2) Upon request, and solely on behalf of customers so requesting, the Administrator is authorized to (A) provide assistance in analyzing and developing retail rate structures that will encourage cost-effective conservation and the installation of cost-effective consumer-owned renewable resources; (B) provide estimates of the probable power savings and the probable amount of billing credits under section 6(h) that might be realized by such customers as a result of adopting and implementing such retail rate structures; and (C) solicit additional information and analytical assistance from appropriate State regulatory bodies and the Administrator's other customers.

(k) There is hereby established within the administration an Assistant Administrator position for conservation and renewable resources. Such Assistant Administrator shall be appointed by the Administrator and shall be assigned responsibility for conservation and direct-application renewable resource programs (including the administration of financial assistance for such programs). Such position is hereby established in the senior executive service in addition to the number of such positions heretofore established in accordance with other provisions of law applicable to such positions.

SAVINGS PROVISIONS

SEC. 10. (a) Nothing in this Act shall be construed to affect or modify any right of any State or political subdivision thereof or electric utility to—

(1) determine retail electric rates, except as provided by section 5(c)(3);

(2) develop and implement plans and programs for the conservation, development, and use of resources; or

(3) make energy facility siting decisions, including, but not limited to, determining the need for a particular facility, evaluating alternative sites, and considering alternative methods of meeting the determined need.

(b) Nothing in this Act shall alter, diminish, or abridge the rights and obligations of the Administrator or any customer under any contract existing as of the effective date of this Act.

(c) Nothing in this Act shall alter, diminish, abridge, or otherwise affect the provisions of other Federal laws by which public bodies and cooperatives are entitled to preference and priority in the sale of federally generated electric power.

(d) If any provision of this Act is found to be unconstitutional, then any contract entered into by the Administrator, prior to such finding and in accordance with such provisions, to sell power, acquire or credit resources, or to reimburse investigation and preconstruction expenses pursuant to section 5, and section 6 (a), (b), (f), or (h) of this Act shall not be affected by such finding.

(e) Nothing in this Act shall be construed to affect or modify any treaty or other right of an Indian tribe.

(f)(1) Nothing in this Act shall be construed as authorizing the appropriation of water by any Federal, State, or local agency, Indian tribe, or any other entity or individual.

(2) In the implementation of this Act, the United States, its agents, permittees, or licensees shall not appropriate, use, divert, dedicate, or claim water within any State unless such appropriation, use, diversion, dedication, or claim takes place pursuant to substantive and procedural provisions of State law, regulation, or rule of law, including the establishment, exercise or enforcement of terms or conditions, governing appropriation, use, diversion, or dedication of water.

(3) Nothing in this Act shall alter in any way any provision of State law, regulation, or rule of law or of any interstate compact governing the appropriation, use, diversion, dedication of, or claim to, water.

(4) Nothing in this Act shall be construed as altering or affecting the rights of any Indian tribe.

(g) Nothing in this Act shall obligate the Federal Government for the performance of any new contracts executed by the Administrator or Council directly or indirectly unless specifically authorized by Congress.

(h) The reservation under law of electric power for use in the State of Montana by reason of the construction of Hungry Horse and Libby Dams and Reservoirs within that State, plus 50 per centum of any electric power produced at Libby Reregulating Dam if built, is hereby affirmed. Electric power so reserved shall be sold at the rate or rates set pursuant to section 7.

EFFECTIVE DATE

SEC. 11. This Act shall be effective on the date of enactment, or October 1, 1980, whichever is later. The term "date of enactment of this Act" as used in this Act shall be either such date or October 1, 1980.

PURPOSE

One of the primary purposes of S. 885[1] is to allow the Pacific Northwest to resolve the competing claims to the Federal energy resources of the region and enable it to focus its attention on the task of developing an economical, adequate, efficient and reliable power system for the future. Additional purposes include: the implementation and development of conservation and renewable energy programs; the establishment of a regional public planning process to enable all regional entities and the public at large to participate in the region's electrical energy decision making process; the protection, mitigation and enhancement of the fish and wildlife resources of the Columbia River and its tributaries; and the preservation of the authorities and responsibilities of non-Federal entities in the electrical energy field. It is not, however, a purpose of this legislation to interfere in any way with, or modify, the statutory rights of preference customers either within or without the region; nor is this legislation intended to be a precedent for any other region of the country.

BACKGROUND AND NEED

Formed in 1937, pursuant to the provisions of the Bonneville Project Act (16 U.S.C. 832; 50 Stat. 731), the Bonneville Power Administration (BPA) was given the authority to build and operate transmission facilities and dispose of electric power to be generated by the Federally constructed Bonneville Dam located on the Columbia River. BPA's authority has been statutorily expanded over the years so that today it transmits and markets the power generated at 30 Federal dams constructed by the Bureau of Reclamation (now the Water and Power Resources Service) and the Army Corps of Engineers located in the Pacific Northwest. At present, BPA markets over 50 percent of all the electricity consumed in its marketing area. This power is transmitted through a vast system of power lines built by BPA (80 percent of the region's high voltage transmission lines are BPA's), and the dams and transmission system are collectively referred to as the Federal Columbia River Power System (FCRPS).

---

[1] S. 885 was approved by the Senate on August 3, 1979. Comparable, though not identical, measures referred to the Committee on Interior and Insular Affairs included: H.R. 3508, by Mr. Ullman (for himself, Mr. Foley, Mr. McCormack, Mr. Duncan of Oregon, Mr. Hansen, Mr. Pritchard, Mr. Symms, Mr. AuCoin, Mr. Bonker, Mr. Dicks, Mr. Lowry, and Mr. Swift); H.R. 4137 and H.R. 4159, by Mr. Weaver; H.R. 5146, by Mr. Ullman; and H.R. 6677, by Mr. Swift.

BPA has no express statutory authority to own, construct or purchase the output or capability of electric generating plants except to meet short term deficiencies. Its sole statutory duty is to market and transmit the power generated at Federal hydroelectric projects. Under a "regional preference and reciprocal act" (16 U.S.C. 837; 78 Stat. 756), BPA's marketing area is defined as including the States of Washington, Oregon, Idaho, and that part of Montana lying west of the Continental Divide. That Act also prohibits BPA from selling Federal power to entities outside the region if there is a demand for that power within the region, and affords similar regional priority with respect to other Federal projects outside the Pacific Northwest for sales to the Pacific Northwest.

The original Bonneville Project Act, like other Federal power marketing laws, contains a "preference clause". This clause requires that BPA, although statutorily authorized to sell power to all types of customers, must give first right and priority to that power to "public bodies and cooperatives". "Public bodies" are defined to include "States, public power districts, counties, and municipalities, including agencies or subdivisions of any thereof". If a shortage of power is contemplated, BPA's other customers must do without, in order that "public bodies and cooperatives" continue to receive the Federal power to which they are entitled.

The class of customers generally considered within the definition of "public bodies and cooperatives" is quite large and diverse. It is presently composed of 36 municipal utilities, 54 rural electric cooperatives, and 26 entities known as PUDs (Public Utility Districts in Washington and People's Utility Districts in Oregon)—a total of 116 "public bodies and cooperatives". These customers are collectively referred to as "preference customers" of BPA. BPA's present contracts with these customers expire during the period from 1983 to 1994.

For a variety of reasons, preference customers proliferated in Washington while meeting with only limited organizational success in Oregon, Idaho, and western Montana. As a consequence, 57 percent of the residential consumers in Washington today are served by preference customers of BPA while only 21 percent, 18 percent, and 21 percent of the residential consumers in Oregon, Idaho and western Montana, respectively, are served by preference customers of BPA. Those consumers not served by preference customers are served by the seven investor-owned utilities of the region. These utilities are referred to as "IOU's".

During BPA's early years, the type of utility ownership serving an area was of little practical consequence. Because of the massive, preinflation era development of Federal dams in the Pacific Northwest, there was an abundance of low cost Federal hydropower, and BPA was able to meet the needs of its preference customers with substantial amounts of Federal hydro remaining. This surplus power was sold to the IOUs in the region and directly to aluminum and other electro-process industries which located in the region during the 1940's and 1950's because of the abundance of power. These industrial customers are directly served by BPA and, hence, are known as direct-service industrial customers or "DSIs". BPA's contracts with DSIs contain provisions whereby BPA can "interrupt" or curtail deliveries of power to the fifteen operating DSIs (six of which are aluminum companies) under a variety of operating and planning contingencies and therefore provide the region with valuable and necessary energy and capacity reserves. Together, the DSIs account for about one-third of BPA's firm and non-firm energy sales. BPA's present contracts with the DSIs expire during the period from 1981–1991.

By the mid-1960's, it became apparent that Federal hydropower abundance would soon come to an end. The Pacific Northwest had run out of economic and environmentally acceptable new sites for large scale, multi-purpose Federal hydroelectric projects. This, combined with projected increases in electrical energy consumption, indicated to BPA and others that additional non-Federal sources of power would soon be required to meet the needs of the region.

Faced with this perceived need, BPA, in cooperation with over 100 utilities in the region, embarked upon Phase I of the Hydro-Thermal Power Program. Under this program, BPA would continue to build the region-wide high voltage transmission system while the utilities in the region would be responsible for building and operating thermal (coal and nuclear) plants sized, located and scheduled to meet regional loads. To provide for the expansion of the region's power supplies and to reduce financing costs for preference customers building plants, BPA developed the concept of "net billing".

Under net billing, a preference customer of BPA agrees to pay a certain percentage of a thermal plant's annual costs in return for an equivalent percentage of that plant's output. The preference customer then assigns its percentage of project output to BPA and BPA credits the preference customer's monthly bill for other energy and services received from BPA with an amount equal to the preference customer's share of the monthly costs of the thermal plant.

In other words, the preference customer receives a monthly power bill from BPA "net" of its share of thermal plant costs. Once BPA receives the preference customer's share of the output of the thermal plants, it combines those resource costs with that of the Federal hydroelectricity, in keeping with normal utility rate-making practices, and sells the aggregate supply to all its customers, including the DSIs, at "melded" rates sufficient to recover all of the costs of producing and transmitting both the thermal and Federal hydro.

Net billing allowed BPA to use its limited authority to acquire non-Federal power without obtaining direct statutory authority to purchase power on a long-term basis. Net billing was specifically approved in the reports accompanying the Public Works Appropriations Acts of 1970 and 1971, as Congress was kept apprised of progress of the Hydro-Thermal Program, although some have criticized the appropriateness of this kind of congressional authority.

Net billing was also supposed to reduce the costs of thermal plants built by preference customers since, under the net billing agreements, BPA was required to credit each preference customers' power bill with that customer's share of the thermal plant's cost, regardless of whether BPA actually received power from the plant. This shifted the risk of a failed plant, or "dry hole" as it is called, from the owner systems to all of BPA's customers in the region whose rates would be raised to compensate for the costs of the nonproducing plant. This made revenue bonds sold by these preference customers to finance the thermal plants more secure. This, in turn, led to better bond ratings with lower interest rates and lowered overall construction costs.

The IOUs in the region did not participate in net billing, partly because BPA did not sell them any significant power to net bill against. Under Phase I, the IOUs were expected to build their own thermal plants to meet their load growth requirements and to replace the hydropower they had been receiving from BPA but would lose in 1973 when their 20-year power sale contracts with BPA expired. BPA could not renew the IOUs contracts because it estimated that it would need the power to serve preference customers, as mandated by the preference clause, and to serve the DSIs as required by their contracts still in effect. (The IOUs have not received any firm power from BPA since 1973. However, estimates in the late 1960's indicated that thermal power costs would be only slightly higher than the cost of Federal hydro. Thus, the IOUs and their retail consumers were not expected to suffer severe cost impacts as a result of losing access to BPA wholesale power.)

The utilities in the region began to implement Phase I immediately. The IOUs began constructing their thermal plants and the preference customers, through a joint operating agency known as the Washington Public Power Supply System (WPPSS) began constructing the net billed plants. In addition, the utilities and BPA sought enactment of legislation which would allow BPA to operate on a "self-financed" basis, whereby BPA could directly apply its revenues to its costs and would be authorized to sell bonds to the U.S. Treasury to raise funds to construct additions to the regional transmission system. This legislation, which was eventually enacted in 1974 as the Federal Columbia River Transmission System Act (16 U.S.C. 838; 88 Stat. 1376), was intended to free BPA from the uncertainties of the appropriations process (though Congress retained considerable authority to disapprove any element of the BPA program) and to allow BPA to construct transmission additions on a timetable compatible with that of the thermal plants.

Phase I soon ran into trouble. First, the costs of the net billed plants began to rise, which would soon exhaust the net billing capability of the BPA System. Second, in 1973, the Internal Revenue Service issued regulations which effectively prevented further participation by BPA in net billing. Third, thermal plant cost escalation also struck the IOUs. This, in turn, forced the IOUs to raise their retail rates which, in many instances, meant that customers of IOUs would end up with higher retail rates (as much as 300% higher) than customers of preference customers of BPA. Rates of preference customers were also going to go up because of the cost escalations of the net billed plants, but these escalations would be mitigated somewhat for many years since the high cost net billed resources were to be "melded" with a large block of quite low cost Federal hydro.

Faced with the limitations of Phase I, the utilities and BPA embarked upon Phase II of the Hydro-Thermal Power Programs in early 1974. Under Phase II, each class of utility agreed to build its own new generation (no net billing for preference customers) and the DSIs were to help make the plan economically feasible by providing a market for any excess power from Phase II projects. As before, BPA would provide certain transmission and other such services such as peaking and reserves. However, Phase II was killed before it got off the ground by a 1975 Federal District Court ruling requiring the preparation of an environmental impact statement on BPA's role in the regional power system. The delay associated with the preparation of the EIS and soaring construction costs created substantial power planning uncertainties for the region's utilities and DISs and, as a result, Phase II was scrapped.

The uncertainties caused by the demise of Phase II were compounded on June 24, 1976, when BPA, in furtherance of its belief that Federal power would not be adequate to meet the projected demands of its preference customers, issued Notices of Insufficiency to these customers. These notices had the legal effect of relieving BPA of liability for any failure to satisfy its preference customers load growth needs after July 1, 1983. BPA also informed its DSI customers that it would probably not be able to renew their power sale contracts when they expire in the period from 1981 to 1991 since it will need the energy "freed up" with the expiration of those contracts to meet the growing requirements of its preference customers, which, by virtue of the preference clause, have first right to it.

Additional power planning uncertainties arose on July 28, 1977, when legislation was enacted in the State of Oregon creating the Oregon Domestic and Rural Power Authority (DRPA). This legislation is intended to make the entire State of Oregon a preference customer of BPA for the purpose of securing a pro rata share of Federal hydro sufficient to meet the total demands of Oregon domestic and rural consumers.

The impetus for DRPA can be traced back to BPA's early years. As was mentioned above, preference customers flourished in the State of Washington but not in Oregon, Idaho and western Montana. While all types of utilities (including IOUs in Oregon) were receiving low cost Federal hydro from BPA, this difference was of no consequence. However, since 1973, when BPA stopped selling power to IOUs, they have had to rely on (as it has turned out) increasingly expensive thermal power. Preference customers, on the other hand, still rely primarily upon low cost Federal hydro. Consequently, wholesale power costs to IOUs are usually higher than those faced by preference customers in the region. Since Oregon is primarily served by IOUs and Washington is primarily served by preference customers, consumers in Oregon (and Idaho and western Montana), on the average, pay more for their electricity at retail than those in Washington.

The State of Oregon has not been alone in its efforts to obtain access to the supply of Federal hydro. On November 14, 1977, the City of Portland, Oregon, filed two lawsuits against BPA in Federal District Court in Portland in an attempt to secure Federal hydro from BPA for the city, which is presently served by two investor-owned utilities. In addition, efforts are being made within the State of Oregon and elsewhere in the region to form new "public bodies and cooperatives" eligible to receive Federal hydro from BPA.

BPA, in recognition of the fact that the Federal resources available to it will be insufficient to meet the requirements of its existing preference customers after 1983, let alone the requirements of any new preference customers such as the Oregon Domestic and Rural

Power Authority, began the process of developing a policy for allocating the Federal power it sells and issued a proposed allocation policy in September, 1979. Under this proposal, existing and any new preference customers will be limited to a pro rata share of BPA power after 1991. Unfortunately, these shares will fall far short of meeting their requirements, especially if most of the DSIs become customers of the preference utilities upon the expiration of their present contracts with BPA or if new preference customer systems are formed. Before 1991, no BPA customer will be assured of getting its requirements met by BPA or certain in advance how much power it will be entitled to. Existing preference customers will, for the most part, be limited to supplies in accordance with their existing contracts, although they may be able to secure some indeterminate amount of additional power as the DSI contracts expire. New preference customers will divide up most of the power "freed up" by expiring DSI contracts, but the amount available to each will be impossible to determine in advance and will likely be insufficient to meet their needs.

It is clear that this allocation policy, once it is finalized and reviewed administratively within the Department of Energy, will be vigorously challenged in the Federal courts. The cost disparity between the Federal resources marketed by BPA, even with the tremendous cost escalations of the three net billed thermal plants presently under construction in the region factored in, and alternative sources of energy is too great for any of the potential claimants to the BPA supply—existing preference customers, the DSIs and potential new preference customers—to ignore. These challenges will undoubtedly be taken to the nation's highest court and could literally take years to resolve. The City of Portland lawsuits and potential lawsuits over the status of Oregon's Domestic and Rural Power Authority will only add to the complexity and length of these legal proceedings.

While these proceedings are being resolved, no utility or other claimant will know for certain how much of the Federal power it will eventually be entitled to receive from BPA and, consequently, will not know what energy resources it should plan to develop for its own use. Unfortunately, current forecasts already show that the Pacific Northwest could experience serious power shortages during any critical water year in the 1980's. The delays associated with the above-mentioned power planning uncertainties will only exacerbate this existing power supply problem.

Available evidence indicates that the frequency and extent of these projected power shortages could be substantially reduced through the implementation of cost-effective conservation programs throughout the Pacific Northwest region. Unfortunately, it appears that the region presently lacks the means with which to undertake the necessary regional conservation effort. Legal and institutional constraints have limited the ability of individual utilities in this area. The ability of BPA to carry out these conservation programs is also limited since its authority to engage in these activities is minor and since it cannot borrow funds to finance their implementation. As a consequence, the Pacific Northwest is unable to "capture" the economic and power supply benefits available through the implementation of effective, region-wide conservation programs.

Many regional observers are of the opinion that the above-mentioned power planning and supply problems and the pending administrative/judicial battle over the allocation of the Federal hydroelectric resources in the Pacific Northwest can only be avoided through enactment of Federal legislation which: (1) lets the Congress decide which regional entities should have access to the Federal hydroelectricity marketed by BPA; (2) authorizes BPA to play a central role in the Pacific Northwest's electric energy decision making process; and (3) expands the authority of BPA to permit it to acquire additional resources on a long-term basis to meet the needs of the region. In addition, it is believed that such legislation can provide the institutional framework necessary for the implementation of effective, region-wide conservation programs, allow the residential and small farm consumers of the region's non-preference utilities to share in the economic benefits of the Federal hydroelectric resources without impinging upon the protections provided to existing or new preference customers of BPA by the preference clause of the Bonneville Project Act, establish a workable public planning process, and facilitate the protection, mitigation, and enhancement of the region's fish and wildlife resources. Finally, it is felt that these legislative goals can be accomplished without adversely affecting other regions of the nation.

The power planning and supply uncertainties presently facing the Pacific Northwest, if left unresolved, could eventually lead to severe economic, social, and environmental disruptions throughout the region. Most parties agree that this type of Federal legislation, although providing for the expansion of BPA's authorities, properly recognizes the unique Federal presence in the Pacific Northwest without creating precedents for other regions and offers the only viable solution to the region's electrical energy problems.

EXPLANATION OF S. 885, AS RECOMMENDED BY THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

The Committee on Interior and Insular Affairs adopted one amendment to S. 885 striking all after the enacting clause and inserting in lieu thereof the text of a substitute bill. The following explanation is of this Committee substitute and all references to "the bill", "the legislation", or "S. 885" in the explanation are to this Committee substitute.

The substitute recommended by the Committee on Interior and Insular Affairs contains a variety of provisions designed to enable the Pacific Northwest to solve the electric power planning uncertainties presently facing it, including these basic features: (1) The establishment of a comprehensive public planning process; (2) a requirement that the Administrator of BPA offer new long-term power sale contracts to preference customers, Federal agencies, investor-owned utilities, and existing direct-service industrial customers of BPA; (3) a power exchange for the benefit of the region's residential and small farm consumers; (4) a grant of additional authority to the Administrator of BPA to require him to acquire on a long-term basis the resources necessary to meet his contractual requirements to his customers; (5) revised rate directives; (6) comprehensive energy conservation provisions; and (7) provisions for the protection, mitigation and enhancement of the fish and wildlife resources of the Columbia River and its tributaries.

Public planning process

The heart of the public planning provisions of this legislation is contained in section 4(a) which establishes an eight member Pacific Northwest Electric Power and Conservation Planning Council. The Council will be composed of two members from each of the States of Washington, Oregon, Idaho, and Montana and they will be appointed by their respective Governors in accordance with applicable State law. The Council members are to be considered employees of their respective States (not of the United States) and will be compensated and subject to removal in accordance with applicable State law.

The chief task of the Council will be to prepare, adopt and periodically review and revise, after public hearings and participation, a regional conservation and electric power plan primarily for the purpose of guiding the Administrator in the exercise of the resource acquisition authorities granted him by section 6 of this legislation (sec. 4(d)). Pursuant to section 4(e)(2), the plan must set forth a general scheme for the implementation of the Administrator's conservation and resource development authorities pursuant to section 6 with due consideration by the Council of environmental quality, compatibility with the existing power system, protection, mitigation and enhancement of fish and wildlife and other appropriate criteria. In addition, under section 4(e)(1), the plan must give the following priority to cost-effective resources the Administrator may implement or acquire: (1) conservation; (2) renewable resources; (3) resources utilizing waste heat or having high fuel conversion efficiency; and (4) all other resources. Section 4(e)(3) sets out the specific elements to be included in the plan. As more fully described below, the plan must also contain provisions relating to model conservation standards and fish and wildlife protection, mitigation and enhancement measures.

In addition to the public participation and input which will come about as a result of the preparation and adoption of the regional plan, the bill facilitates public input and knowledge by requiring, in section 4(g), that the Council and the Administrator inform the public on major regional power issues, obtain their views on such issues, and secure the advice and consultation of the Administrator's customers and others.

New long-term power sale contracts

Provisions governing power sales by BPA are contained in Section 5 of S. 885.

Specifically, section 5(b)(1) requires the Administrator, if requested, to enter into long-term power sale contracts with both preference and investor-owned utilities in the region to supply them with the firm power they need to meet their firm loads in the region to the extent they cannot meet their own loads with their own resources. The practical effect of this mandate is that: (1) preference utilities, whose current loads are now almost entirely met by BPA, will continue to have all of their firm power needs in the region met by BPA, and (2) investor-owned utilities, which already own most of the resources necessary to meet their existing loads, will receive from BPA the power needed to meet their firm load growth requirements within the region. Section 5(d)(1) of the bill authorizes the Administrator to sell power to its existing direct-service industrial customers and requires him to offer to such customers initial long-term power sale contracts that provide them with amounts of power equivalent to that provided them under their existing contracts with BPA; however, sales to new DSI customers are expressly prohibited (sec. 5(d)(2)). These new DSI contracts must continue to provide reserves for the region. Finally, section 5(b)(3) authorizes BPA to sell power to Federal agencies in the region.

Pursuant to section 5(g), the Administrator is required to offer all of these customers initial long-term contracts.

As more fully described below, section 6 of S. 885 requires the Administrator to acquire on a long-term basis sufficient resources, including conservation, necessary to fulfill his contractual obligations to his customers. However, the legislation recognizes that these resource acquisition authorities may prove to be inadequate and therefore requires the Administrator to include in contracts with utility and Federal agency customers provisions permitting him to restrict his obligations to meet the full requirements of such customers in the future if he determines, after a reasonable period of experience under this legislation, that he cannot be assured on a planning basis of being able to acquire the necessary resources (sec. 5(b)(5)).

It is anticipated under this legislation that each BPA customer group will provide BPA, through the acquisition procedures of section 6, with sufficient power to meet each such customer group's load requirements. Section 5(e) of S. 885 will encourage these customer groups to actually provide BPA with such resources since it provides that customers will not be restricted pursuant to section 5(b) below the amount of power that they have provided BPA pursuant to section 6.

Section 5 of S. 885 also contains provisions designed to insure that preference customers of BPA continue to have supply preference to the amount of resources to which the preference clause applies. The most significant of these is section 5(a) which provides that all power sales by BPA pursuant to this legislation "shall be subject at all times to the preference and priority provisions of the Bonneville Project Act of 1937. . . . and, in particular, sections 4 and 5 thereof." In addition, section 5(b)(6) prohibits the Administrator from imposing restrictions on preference customers and Federal agencies if such restrictions would reduce the total contractual entitlement of such customers to an amount less than the amount of power to which the preference clause applies—the Federal base system resources. Taken together, these and other provisions of section 5 will make certain that all preference customer contract requirements will continue to have a priority over BPA sales to other customers.

Residential power exchange

Section 5(c) of S. 885 contains provisions for a residential power "exchange". Under these provisions, any utility in the region would be entitled to sell to BPA an amount of power equal to the utility's residential and small farm load at the "average system cost" of such power and BPA would be required to sell back to each such utility an equivalent amount of power at a rate identical to what preference customers pay BPA for power to meet their "general requirements" (subject to a "rate ceiling").

Although this exchange is technically available for use by any utility in the region, including preference utilities, it is anticipated that the region's investor-owned utilities will make primary use of it. This exchange will allow the residential and small farm consumers of the region's IOUs to share in the economic benefits of the lower-cost Federal resources marketed by BPA and will provide these consumers wholesale rate parity with residential consumers or preference utilities in the region. Customers of preference utilities will not suffer any adverse economic consequences as a result of this exchange since, as discussed below, the direct-service industrial customers of BPA are required to pay the costs of the exchange during its initial years while a "rate ceiling" protects the customers of preference utilities during later years.

The cost benefits of any exchange are required under section 5(c)(3) to be passed directly through to the appropriate residential and small farm consumers. In addition, section 5(c)(2) requires that the amount of power permitted to be exchanged must be "ramped" in, beginning at 50 percent of the utility's residential and small farm load in 1980 and increasing to 100 percent of such load in 1985.

Authority to acquire resources

Section 6 of the legislation authorizes and requires the Administrator of BPA to acquire on a long-term basis sufficient resources, including conservation, to meet his section 5 contractual obligations to his customers. This resource acquisition authority, by providing the Administrator with the ability to expand the energy resource pool available to him, allows the Administrator to enter into the long-term power sale contracts with preference and investor-owned utilities, Federal agencies and existing direct-service industrial customers and obviates the need for him to administratively allocate the limited amount of Federal resources among existing and potential claimants to it. Thus, the Pacific Northwest will be able to avoid the power planning and supply uncertainties inherent in such an administrative allocation of over one-half of the region's electrical energy resources.

Specifically, section 6(a) of S. 885 requires BPA to: (1) acquire all conservation resources and renewable resources installed by residential and small commercial consumers, and (2) implement all conservation measures, including loans and grants for insulation and weatherization, which are determined to be consistent with the plan developed by the regional Council pursuant to section 4 or, if no plan is in effect, consistent with sections 4(e)(1) and (2). Section 6(b) requires BPA to acquire sufficient resources to meet its contractural obligations, after taking into account planned savings from measures provided for in section 6(a), which are determined to be consistent with the plan, or, in the absence of a plan, with sections 4(e)(1) and (2). Section 6(c) sets out additional procedural requirements which must be met in the case of any "major" resource acquisition proposal. These requirements include detailed notice, hearing and decision-making procedures and a requirement that any major resource acquisition proposal found to be inconsistent with the plan or, in the absence of a plan, with sections 4(e)(1) and (2) must be specifically authorized by Act of Congress.

The authority to acquire resources under section 6 will not permit BPA to construct or own any generating facility; rather, it will permit BPA to purchase the output or, to reduce unnecessary costs of resources not yet constructed, the capability of resources owned and operated by other entities in the region.

Revised rate directives

Section 7 of the legislation sets out the requirements BPA must follow when fixing rates for the power sold its customers under this legislation. Subject to the general requirement (contained in section 7(a)) that BPA must continue to set its rates so that its total revenues continue to recover its total costs, BPA is required by the legislation to establish the following rates:

A. The lowest rates will be reserved for the normal loads ("general requirements") of preference utilities and for the power sold to utilities under the section 5(c) exchange provisions for service to their residential and small farm loads (sec. 7(b)(1)).

B. A higher rate will apply to the load growth of the region's investor-owned utilities and for the power needed by preference utilities to meet any "new large single loads" they may have (sec. 7(f)).

C. The direct-service industrial customers of BPA will pay rates prior to 1985 sufficient to cover the cost of resources required to serve them plus the otherwise unrecovered cost of the section 5(c) exchange power. After 1985, the direct-service industrial customers rates will be based on the retail industrial rates charged by BPA's preference utility customers (sec. 7(c)). In essence, the DSIs by paying these higher rates make it possible for the residential and small farm consumers served by the region's investor-owned utilities to share in the economic benefits of the Federal resources without increasing power costs for preference utilities and their customers.

As an added protection against preference utilities and their customers suffering adverse economic consequences as a result of this legislation, section 7(b)(2) establishes a "rate ceiling" which is hypothetically intended to insure that these customers' rates will be no higher than they would have been had the Administrator not been required to participate in power sales or purchase transactions with non-preference customers under this legislation.

Energy conservation provisions

S. 885 contains a variety of comprehensive and interrelated energy conservation provisions designed to encourage and achieve cost-effective conservation within the Pacific Northwest.

As was noted above, section 6(a) of the legislation requires the Administrator of BPA to implement all conservation measures and acquire consumer-installed renewable resources as are cost-effective, through a variety of measures including loans and grants to consumers for insulation and weatherization. Section 6(b) permits the Administrator to acquire other resources to meet his contractual obligations but only after taking into account planned conservation savings under section 6(a). (The section 3(4) definition of "cost-effective" also gives conservation measures a 10 percent advantage over all other resources.) Thus, sections 6(a) and (b) together require the Administrator to achieve all available conservation and prevent him from acquiring non-conservation resources without first taking into account planned savings from conservation.

Section 4(d) requires the preparation of a regional electric power and conservation plan in which conservation would have first priority. This plan would consist of, among other things, an energy conservation program including model conservation standards applicable to electrical energy consuming activities. Under section 4(f), surcharges of from 10 percent to 50 percent on BPA rates could be assessed customers or jurisdictions which do not implement the standards or achieve comparable energy savings. Thus, the bill directly encourages the use of authorities by State and local governments to achieve energy conservation.

Section 6(h) requires the Administrator to pay billing credits (reductions in customer's bills) for customer conservation activities independently undertaken which reduce the demand on BPA. This provision is expected to induce local utility initiative to reduce energy demand. In addition, retail rate structures which reduce demand would qualify for such credits under section 6(h)(5).

Finally, section 8(d) increases BPA's borrowing limit to establish a $1¼ billion revolving fund for conservation and renewable resource loans and grants. This authority would help finance the conservation actions authorized by section 6(a) and other provisions of the bill and would be supported solely by BPA revenues.

Fish and wildlife provisions

This bill provides, primarily through section 4(h), a mechanism agreeable to both the power and fisheries interests in the Pacific Northwest for developing a comprehensive program to protect, mitigate and enhance fish and wildlife resources affected by the hydroelectric facilities on the Columbia River and its tributaries. The bill creates a forum for the resolution of conflicts between fisheries and power interests on this unique and complex river system, and provides a means for funding the fish and wildlife provisions adopted as part of the program. Although this approach is not intended to create any new obligations with respect to fish and wildlife, it will provide a system for insuring that existing fish and wildlife obligations are fulfilled while simultaneously assuring the region an economical and reliable power supply. This approach should work extremely well on the Columbia River and its tributaries without creating an adverse precedent for either fisheries or power interests in other regions of the country.

Specifically, section 4(h) requires the Council to promptly develop a comprehensive program of fish and wildlife measures based on recommendations of the region's fisheries agencies, utilities and others. The section sets out specific criteria such recommendations must meet in order to be included in the program. Once developed and adopted, the program will be incorporated into the regional electric power and conservation plan, but will also exist independently of the plan. BPA is authorized to use its power revenues and borrow from the Treasury for the purpose of implementing the program. Other Federal agencies, whose existing authorities are not changed by this legislation, are required to take the fish and wildlife program into account in exercising their independent statutory responsibilities. Finally, although section 4(h) does not apply to rivers in the region other than the Columbia River and its tributaries, the fish and wildlife resources on those other rivers will be protected under this legislation through other provisions designed to minimize environmental impacts generally in the implementation of this Act.

This legislation does not itself authorize any appropriation of water for fisheries purposes; all actions of other Federal agencies, including actions to assist fish migration, must be taken under other authorities. The goal of the program is not to increase the obligations of water project owners and operators, but rather to go beyond a project-by-project approach on a river system whose multiplicity of projects and interdependent biological species makes a project-by-project approach unsatisfactory for all involved parties.

SECTION-BY-SECTION ANALYSIS OF S. 885, AS RECOMMENDED BY THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

Section 1—Short title and table of contents

This section provides the short title, the "Pacific Northwest Electric Power Planning and Conservation Act" and a table of contents.

Section 2—Purposes

This section establishes purposes of the bill that emphasize both the uniqueness and the multi-purpose character of the Pacific Northwest's power supply system in general and the Federal Columbia River Power System in particular. These purposes, which are given substantive effect through other provisions of the bill, are to be consistent with one another and with other laws.

Section 3—Definitions

This section contains definitions of terms used throughout this legislation.

Section 3(1) defines "acquire" and "acquisition" to make clear that use of these terms in this bill does not authorize BPA to own or construct generating facilities.

Section 3(2) defines "Administrator" as the Administrator of BPA.

Section 3(3) defines "conservation" as a reduction in electric power consumption resulting from increases in efficiency in energy use, production or distribution.

Section 3(4) defines "cost-effective" for purposes of regional power planning and resources acquisition. The definition essentially requires a full marginal cost comparison among alternatives such as conservation and generating resources, and specifies the basis of such comparisons. This definition insures that decommissioning costs and projected increases in fuel costs are specifically included in the estimate of the direct costs of a resource.

The Committee intends that the appropriate historical experience with similar resources shall be the starting point in determining the estimated amount of power that particular types of resources may produce, and that those who contend that such estimates should reflect other factors (e.g., technological improvements) should have the burden of demonstrating the appropriateness of such factors.

Section 3(5) defines "consumer" as an end user of electric power, as distinct from a wholesaler of electric power such as a utility.

Section 3(6) defines "Council" to mean the regional council contemplated under section 4.

Section 3(7) defines "customer" as anyone who purchases power from BPA. Thus, direct-service industries are "customers" as well as "consumers" for purposes of this bill; utilities are "customers" only.

Section 3(8) defines "direct service industrial customer" as an industrial customer that purchases power from BPA.

Section 3(9) defines "electric power" to mean electric peaking capacity or electric energy, or both. This definition already applies to BPA through the Federal Columbia River Transmission System Act, and avoids the need to use the terms "peaking capacity" and "energy" throughout the bill except where the distinction is necessary and made.

Section 3(10) defines "Federal base system resources" to include existing and future Federal hydro projects, resources acquired by BPA under existing contracts, and resources acquired as replacements therefor. This defined term is used in several of the bill's provisions that protect the preference rights of public bodies and cooperatives.

Section 3(11) defines "Indian tribe" in a manner consistent with the definition used in similar resource management laws.

Section 3(12) defines "major resources". The definition includes a size limit (fifty average megawatts), since the bill draws substantive and procedural distinctions between major and non-major resources. The definition also includes, in the case of resources acquired by BPA, a durational criterion (more than five years), since BPA is already authorized under the Federal Columbia River Transmission System Act to make short-term purchases (five years or less) to meet its contractual obligations.

Section 3(13) defines "new large single loads", a term with rate consequences under sections 5(c) and 7(b) of the legislation. Under this definition, September 1, 1979, is the "cut-off" date for all categories of new large single loads; no cut-off date distinction is made between industrial and non-industrial loads of this type. Thus, a large single load of a utility is a "new large single load" if it was not contracted for or committed to by that utility prior to such date.

Section 3(14) defines "Pacific Northwest", "region" or "regional".

Section 3(15) defines "plan" to mean the regional electric power and conservation plan to be developed by the Council under section 4 of the legislation.

Section 3(16) defines "renewable resource", and includes not only generating resources using a renewable source of energy but also resources that reduce consumer power needs through direct application such as solar hot water systems. "Breeder" or "fusion" projects cannot qualify as renewable resources under this definition.

Section 3(17) defines "reserves", which represent power available to protect firm loads from various shortage or operating situations. BPA obtains a portion of its power system reserves through rights to curtail power deliveries to direct-service industries; the term is also used in section 6(h) with respect to calculation of billing credits for BPA's customers.

Section 3(18) defines "residential use" and "residential load", a term that determines the amount of power a utility may exchange with BPA under section 5(c). This term includes all normal residential loads along with the first four hundred horsepower during any monthly billing period of farm irrigation and pumping for any farm. This limit recognizes the higher lift distances and different soil conditions in areas east of the Cascade mountains.

Section 3(19) defines "resource" to mean either electric power (including actual or planned capability of generating resources) or reductions in load (including actual or planned savings from conservation measures and direct-application renewables). Conservation is therefore a resource for purposes of this bill. The definition also helps make clear, as does section 3(1), that if BPA acquires a resource, it does not become the owner of an electric generating facility.

Section 3(20) defines "Secretary" to mean the Secretary of Energy.

Section 4—Regional planning and participation

Section 4(a) (1) through (3) establishes an eight member Pacific Northwest Electric Power and Conservation Planning Council which will be considered formed upon the appointment of six members. The Governors of Idaho, Montana, Oregon, and Washington, subject to applicable State law, may each appoint two members to the Council from their respective States. Applicable State authorities and appointing actions of the States constitute their agreement to the exercise by the Council of its functions under this legislation, to which the Congress consents. The arrangement contemplates that State officials on the Council would be authorized to carry out their functions under State law consistent with the scheme of the bill. Council members are deemed to be employees or officers of their respective States, and are subject to removal pursuant to, and compensated in accordance with, applicable State law.

The Committee notes that the Appointments Clause of the United States Constitution has been raised as a possible impediment to gubernatorial appointment of these Council members. However, the Committee believes that the Constitution allows the Congress, through the broad powers it possesses under the Commerce and Property Clauses of the Constitution, to share with the States the type of responsibilities granted to the Council by this legislation and that the Appointments Clause does not prevent an interstate arrangement such as this where the Congress expressly consents to share responsibility with the States in an area of mutual, rather than purely Federal, responsibility. Energy planning is interstate in character, particulary in the Pacific Northwest where the four States and the Federal Government are bound together by their shared interest in, and mutual dependence upon, an integrated regional power system.

The Committee believes that gubernatorial appointment of Council members will most fully carry out its intent to establish an effective regional power and conservation planning council to assure maximum regional cooperation in energy planning and to help guide the new authority granted to BPA by this legislation. The Council arrangement also permits early State involvement in energy planning, to complement those State authorities reserved by section 10, and to recognize the shared State and Federal authorities in energy planning and regulation that would continue under this Act. In addition, the Committee understands that the size, composition and functions of the Council as set out in this section and section 6 are uniquely acceptable to the major participants in regional discussions concerning these issues.

Section 4(a)(4) provides for a temporary Federally-appointed Council in the event that the State-appointed Council is unable to be formed or is found to be unable to perform its functions by a Federal Court of Appeals.

Under this provision, the Secretary of Energy would appoint two Council members from each State in a manner designed to assure continuity and prevent disruption of the Council's activities. Because this Federal appointment is intended to assure continuity, the Committee would encourage the Secretary to consider appointing those members already serving for the respective States or recommended by the appropriate Governors in the event that this provision becomes effective.

Members so appointed would serve until the Council terminated or until the defect that caused the State-appointed Council to fail was corrected by the States or the Congress, as appropriate. If the defect is not cured, the Federally-appointed Council would terminate at the end of the second full Congress following the Secretary's first appointment, unless extended by Congress.

The Secretary is required to submit to the Congress, in consultation with the Governors, recommended legislation that would cure the defect that caused the State-appointed Council to fail and would once again permit State appointment.

In the event that the Council terminates after inaction by the Congress, the Administrator would not be able to acquire a major generating resource or to grant a billing credit involving a major generating resource until the expenditure of funds for that purpose had been specifically approved by the Congress.

As was noted above, the Committee believes gubernatorial appointment of Council members will most fully carry out its intent to establish an effective energy planning mechanism for the Pacific Northwest and that the Appointments Clause does not bar its formation or operation. However, in the event that a United States Court of Appeals determines that this type of arrangement is constitutionally infirm, in whole or in part, the Committee hopes that whatever relief is prescribed be as narrow as possible, with an eye towards preserving this Committee's essential objective, the perpetuation of regional energy planning substantially as envisioned in section 4. For instance, should such a court determine a particular, but not necessarily key activity to be unconstitutional, the Committee suggests that such responsibility alone be suspended and the larger planning scheme be allowed to function. Because of the urgent needs this legislation is designed to address, the Committee does not intend that this entire Act should fall on the basis of any judicial ruling if such a result can possibly be avoided.

Section 4(a)(5) sets out the requirements for voting by the Council. Under this section, either a simple majority, as long as the majority includes at least one member from each State, or six votes, even though both members of a particular State vote "no", are required for adoption and amendment of the regional conservation and electric power plan. These voting requirements should adequately protect individual States and facilitate development of the regional plan upon which the entire conservation and resource program envisioned by the bill depend while at the same time avoiding the disruption possible if complete unanimity among the States was required for the adoption of the plan.

Section 4(a)(6) provides for selection of a Council Chairman from among its members, and specifies the procedures for calling meetings and for the submission of dissenting or additional views by any Council member.

Sections 4(a)(7) through (11) provide for appointment of Council staff; authority to request personnel from Federal agencies on a reimbursable basis; reliance, to the greatest extent practicable, on customers of the Administrator and other regional entities for expert and technical information; Council determination of its procedures and public access thereto as well as to its annual work program budget; provision to the Council by the Administrator and other Federal agencies of relevant information requested by it; and other administrative responsibilities and authorities of the Council.

Section 4(a)(12) directs the Administrator at the request of the Council to provide financial support for the performance of the Council's functions and to the States that have appointed members to the Council for their participation in, and activities related to, the Council.

Section 4((b) directs the Council to establish a voluntary scientific and technical advisory committee and authorizes the establishment of such other voluntary advisory committees as it deems necessary.

Section 4(c) directs that these Council advisory committees shall be composed of, and rely upon, to the greatest extent feasible, the various Federal, State and Tribal governments, consumer groups and customers whose interests are affected by the committees. The committee intends that such committees shall be manageable in terms of total size and composition.

Section 4(d) sets out the Council's primary responsibility, to prepare and adopt within two years a regional conservation and electric power plan and to review and amend, if necessary, the plan at least once every five years. Public legislative type hearings are required to be held before adoption of the plan or substantial, nontechnical amendments to it.

Section 4(e)(1) directs that the plan give priority to resources that the Council determines to be cost-effective as follows: first, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or having high fuel conversion efficiency; and fourth, to all other resources.

Section 4(e)(2) requires that the plan shall set forth a general scheme for implementing conservation measures and developing resources pursuant to section 6 with due consideration to environmental quality, compatibility with the existing regional power system, protection, mitigation and enhancement of fish and wildlife, and other relevant criteria.

Section 4(e)(3) sets out the following specific elements that will be included in the plan: (1) an energy conservation program, including model conservation standards; (2) recommendations for research and development; (3) a methodology for determining "quantifiable environmental costs" under section 3(4); (4) a 20-year demand and resource forecast; (5) an analysis of cost-effective methods of providing reserves; (6) the fish and wildlife program adopted pursuant to section 4(h); and (7) a methodology for calculating model conservation surcharges, if recommended. This section makes it clear that only these elements will be included in the plan and that the Council has full discretion to determine the amount of detail that is appropriate for each element in the plan.

Section 4(e)(4) requires the Council to study conservation measures reasonably available to direct service industrial customers and other major consumers of electric power. The study shall include an analysis of financial assistance that might be necessary and available to permit particular conservation measures to be implemented. This study is not required to be part of the plan.

Section 4(f)(1) describes the model conservation standards that are to be included in the plan. These standards are to be designed to produce all power savings that are cost-effective for the region and economically feasible for consumers through financial assistance made available under this legislation. Consumers will therefore bear the cost of conservation measures that are cost-effective in terms of the electric rates consumers pay, while the cost of the additional increment of conservation that is cost-effective to the region will be met through financial assistance that BPA is required to provide under section 6(a).

Section 4(f)(2) describes the surcharge that the Council may vote to recommend that the Administrator impose on customers for those portions of their loads within States or political subdivisions which have not, or on customers which have not, implemented conservation measures that achieve energy savings that the Administrator determines are comparable to those which would be obtained under the model conservation standards established pursuant to this section. These surcharges shall not be less than 10 percent nor more than 50 percent of the Administrator's applicable rates for such load or portion thereof.

Section 4(g) directs the Council and the Administrator to undertake measures to insure widespread public involvement in the formulation of regional power policies and requires the Council and the Administrator to take into account State and local elections in the region that bear on regional power policies.

Section 4(h) contains detailed provisions concerning the protection, mitigation and enhancement of fish and wildlife on the Columbia River and its tributaries and incorporates the recommendations proposed by an ad hoc committee of Federal, State and Tribal fisheries agencies, Federal power and water management agencies, and BPA customers.

Section 4(h)(1)(A): This subparagraph requires the Council to develop a unified program for the protection, mitigation and enhancement of fish and wildlife on the Columbia River and its tributaries. This provision recognizes that the history, problems and opportunities of the Columbia River system are unique, making such a program suitable and desirable for this particular river system but not for other rivers or systems in or out of the Pacific Northwest region. The provision therefore contains a non-applicability clause to ensure that the type of program contemplated by this legislation is not a precedent for other areas.

Section 4(h)(1)(B): This subparagraph requires the Council, as a first step in developing the program, to request promptly from the relevant fish and wildlife agencies their recommendations for (i) measures to protect, mitigate and enhance fish and wildlife affected by the hydroelectric projects of the Columbia River system, (ii) objectives for development and operation of such projects in a manner that will protect, mitigate and enhance fish and wildlife, and (iii) management coordination, research and development, and funding that will aid protection, migration and survival of anadromous fish. It is anticipated that because of the importance of nonfirm power sales outside the Pacific Northwest and the opportunity value of such sales, at least some of these recommendations will explore alternative methods by which fish migration can be improved without unnecessary spillage of water.

Section 4(h)(1)(C)(i) established the procedure for the Council's solicitation of recommendations relating to protection, mitigation and enhancement of fish and wildlife.

Section 4(h)(1)(C)(ii) provides procedures for making the received recommendations and comments available to all relevant parties and the public, and for conducting hearings and otherwise ensuring public participation and comment on the recommendations.

Section 4(h)(1)(C)(iii) requires the Council to develop the program on the basis of the recommendations, comments and information received. The program is to consist of measures that protect, mitigate and enhance fish and wildlife affected by the Columbia River system while satisfying the power supply purposes of the Act. Enhancement measures that are designed to achieve protection and mitigation and that meet the criteria of Section 4(h) are to be included in the program. The latter statement helps clarify that in this context enhancement is not a new or additional obligation, but a means of fulfilling existing protection and mitigation obligations under the unique circumstances presented by the Columbia River power system.

Section 4(h)(1)(C)(iv) sets substantive criteria for measures included in the program. The criteria include: (1) complementary with other related efforts; (2) scientific support; (3) minimization of cost, not absolutely but for any given biological objective; (4) consistency with the legal rights of Indian tribes; and, in the case of anadromous fish, (5) provision for improved survival of such fish at hydroelectric facilities; and (6) provision for flows between such facilities to improve production, migration and survival of such fish as necessary to meet sound biological objectives.

Section 4(h)(1)(C)(v) requires the Council to determine whether each recommendation is consistent with the purposes of the Act, and to reconcile inconsistencies among individual recommendations in order to create an internally consistent program. The Council may decline to include a recommendation in the program only if that recommendation is (1) inconsistent with the purposes of the Act, (2) inconsistent with standards established for the program, or (3) less effective than an adopted recommendation in achieving protection, mitigation and enhancement.

Section 4(h)(1)(C)(vi) contains additional principles to guide the Council in developing the program. These include:

1. The use of enhancement as a tool for achieving off-site protection and mitigation (in appropriate circumstances), not as an additional obligation.

2. Consumers of electric power should bear only those costs attributable to electric power facilities and programs (but not the cost of measures designed to deal with impacts caused by other factors).

3. Monetary costs and power losses resulting from implementation of the program are to be allocated among projects, both Federal and non-Federal, in accordance with the relative impacts of individual projects and with system-wide objectives.

4. While the program shall include directly only those measures needed to deal with impacts caused by power facilities and programs, it may be integrated with similar efforts dealing with other impacts (or additional enhancement) to the extent the administration and funding of such additional efforts are provided through other provisions of law or ancillary agreements.

Section 4(h)(1)(C)(vii) sets a time limit for adoption of the program by the Council, requires the program to be included in the Council's regional power and conservation plan adopted pursuant to section 4(d), and provides for judicial review of the Council's actions in adopting the program. The intent is that the program may exist independently of the regional plan, as well as being incorporated into that plan as one of the plan elements.

Section 4(h)(2)(A): This subparagraph requires BPA to use its funding authorities (i.e., borrowing and, potentially, appropriations) to protect, mitigate and enhance fish and wildlife to the extent such resources are affected by the hydroelectric projects of the Columbia River and its tributaries. (Section 8(b) provides BPA's authority to pay the costs of all acquired resources regardless of location, including fish and wildlife protection costs.) In doing so, BPA shall act consistently with the regional plan, the program developed under this subsection, the purposes of this Act and other provisions of law. BPA expenditures shall be in addition to, not in lieu of, other expenditures authorized or required to be made by other entities under other agreements or provisions of law. Other fisheries efforts outside this Act, for example, are expected to continue and to be funded separately.

Section 4(h)(2)(B): This subparagraph requires BPA to include proposed expenditures under this subsection in its budget submittals to Congress, and, in the case of major expenditures, to obtain approval in the same manner as is currently required for major transmission system additions.

Section 4(h)(2)(C): The allocation of particular costs to individual projects and among different project purposes, as is required by existing law, is preserved in this subparagraph to avoid establishing any precedent of a different allocation result. Thus, power, irrigation, navigation, recreation and other project purposes will continue to bear only their established shares of the total costs attributable to protection and mitigation measures. All expenditures by BPA are to be made on a reimbursable basis vis-a-vis other project purposes, although BPA will have the flexibility to treat expenditures in excess of its allocated share as being payments for other project costs for which BPA is responsible under existing law.

Section 4(h)(3)(A): This subparagraph requires all Federal agencies with responsibilities for hydroelectric facilities on the Columbia River system to do two things. First, such agencies must exercise their responsibilities (in coordination with one another, and consistently with the purposes of this and other laws) to protect, mitigate and enhance fish and wildlife in a manner providing equitable treatment for such fish and wildlife relative to the other purposes for which the Columbia River system and facilities are managed and operated under other provisions of law.

Second, such agencies are required to take into account to the fullest extent practicable the program adopted under this subsection when they exercise their responsibilities. This provision does not change the existing statutory authority of other Federal agencies such as the Corps of Engineers or FERC. It does require them, in the interest of coordination, to recognize BPA's obligations under this and other laws and to take into account, at each relevant stage of their own decision-making (pursuant to existing processes), the decisions embodied as measures in the Council's fish and wildlife program. If such agencies reject the implementation of any measure contained in the program, they should indicate in writing the basis for that decision so that all parties will have a basis for understanding the decision.

Subparagraph 4(h)3(A) also requires the Administrator to reimburse non-Federal projects for monetary costs of power losses to the extent program measures not attributable to those projects themselves are imposed upon the projects as a result of the consideration given the program by other agencies (e.g., FERC).

Section 4(h)(4) requires reports to Congress by the council and the Administrator on the fish and wildlife program.

Section 4(h)(5) provides a means of ensuring that the program contemplated in this subsection is developed in timely fashion, even should the Council itself be delayed in formation or proven unable to function.

Section 4(i) requires the Administrator and Council to consult with BPA customers and to recognize and not abridge the authorities of State and local governments, electric utility systems, and other non-Federal entities responsible for power supply.

Section 4(j) requires the Council and the Administrator to encourage the cooperation and participation of appropriate Federal, State, local and Tribal entities in the preparation, adoption and implementation of the regional plan.

Section 5—Sale of power

Section 5(a) makes clear that all power sales under this bill are subject at all times to the Bonneville Project Act, particularly sections 4 and 5 of that Act. This provision therefore retains the preference and priority accorded public bodies and cooperatives in BPA power sales. Related preference protecting provisions include sections 5(b), 7(b) and 10(c).

Section 5(b)(1) requires BPA to offer to sell to each requesting utility the power needed by the utility to meet its firm load within the region in excess of the utility's own firm resources, and specifies the method of determining the utility's own firm resources. This section also clarifies that firm energy and firm peaking resources of a utility may differ and that the firm energy associated with the firm peaking component of a resource is the firm energy produced in the peaking use of that resource.

Section 5(b)(2) reaffirms the provisions of the Bonneville Project Act that BPA must be able to reduce its obligations to investor-owned utilities upon five years notice. The Committee does expect, however, that BPA can and should be able to provide a long notice period to these utilities to the extent practicable to facilities orderly planning by these utilities.

Section 5(b)(3) authorizes BPA to sell power to Federal agencies in the region. Although Federal agencies are not preference customers, some have long depended on BPA for power, and it is intended that BPA continue to serve these agencies.

Section 5(b)(4) requires that BPA sales under this subsection be made, as they are today, only to entities meeting BPA's standards for service. This ensures that BPA will not be required to serve technologically unprepared or unsuitable customers.

Section 5(b)(5) continues the requirement of the Bonneville Project Act that BPA include in its contracts with utilities provisions permitting BPA to restrict its contract obligations to meet such customer's full requirements during any period of insufficiency. The subsection requires a reasonable period of experience under this Act prior to BPA's giving notice of a period of insufficiency, and also a reasonable notice period before any restriction becomes effective for preference customers and Federal agency customers. This subsection deals with restriction of contract obligations on a planning basis for future periods, not actual power deliveries during an operating shortage, since actual operating curtailments for utilities are imposed by State and local governments, not BPA.

Section 5(b)(6) specifices that the total contractual entitlements of preference customers and Federal agencies during any period of insufficiency shall not be less than the total firm capability of the Federal base system resources. This is to protect preference. In order to aid planning by such customers, the subsection requires that the contract formula for allocating entitlements during any such period shall be on a uniform basis, and shall disregard resources of such customers other than those dedicated to their firm loads prior to the effective date of this Act. The subsection also makes clear that the actual contract entitlement of any such customer shall not exceed that customer's actual net requirements during any period of insufficiency.

Section 5(c) permits power exchanges between BPA and Pacific Northwest utilities for the benefit of residential and small farm consumers. The cost benefits of such exchanges are required to be passed through directly to the residential and small farm consumers themselves. Exchange agreements may be terminated by the utility under specified circumstances, and upon reasonable terms and conditions agreed in advance, but during any period of insufficiency a utility's entitlement under this section shall not be less than the amount of power BPA acquires from or on behalf of such utility under this section. The rate BPA pays for power so acquired shall be based on an "average system cost" methodology BPA develop in consultation with the Council, BPA customers and appropriate State regulatory bodies; the methodology is subject to review by FERC under this section and section 9(g). Paragraph (7) specifies certain costs that must be excluded from the amounts BPA pays for resources exchanged under this section. Such excluded costs include: the cost of additional resources in an amount sufficient to serve any new large single loads; costs of resources used to serve additional loads outside the region after the effective date of this Act; and costs of any generating facility which is terminated prior to inital commercial operation. This subsection also requires that the exchange be "ramped" in from 50 percent of the residential load in the year beginning July 1, 1980, to 100 percent in the year beginning July 1, 1985.

Section 5(b) mandates continued BPA power sales to existing direct-service industries and prohibits such sales to new DSIs. Existing DSIs will receive the amount of power to which they are entitled under present "Industrial Firm" power sales agreements. These agreements include contingent allowances for defined technological improvements (excluding plant expansion), but no additional BPA sales to existing DSIs are authorized unless the conditions of paragraph (3), including Council approval, are satisfied. The definition of "existing" direct-service industrial customers included in this subsection makes it clear that one DSI with a present contract with BPA but with no existing facilities shall not be considered an "existing" DSI for the purposes of this section.

Sales to existing DSIs are required under this subsection to continue to provide a portion of BPA's power system reserves. The Committee understands and intends that the new DSI contracts under the legislation will provide capacity reserves similar to those provided in the present contracts. Fifty per cent of the then operating DSI load may be restricted for a period of up to two hours to provide a forced outage or peaking power reserve. One hundred per cent of the DSI load may be restricted by BPA for up to five minutes whenever frequency problems arise on the regional grid.

The DSIs will also provide two types of energy reserves. Approximately 25 percent of the DSI load is to be treated as a firm load for purposes of resource operation and will provide an operating reserve that may be restricted by BPA at any time in order to protect the Administrator's firm loads within the region and for any reason, including low or critical streamflow conditions and unanticipated growth of regional firm loads. An additional 25 percent of the DSI load will be treated as a firm load for both planning and operating purposes and will provide a planning reserve to protect the Administrator's firm loads against the delayed completion or unexpectedly poor performance of regional generating resources or conservation measures implemented or acquired by BPA.

Section 5(e) governs contractual entitlements of BPA customers during any period of insufficiency. Other provisions specify minimum entitlements based on the preference clause or section 5 contract rights; this provision by contrast governs entitlements based on power sold by the customers to BPA under section 6. Each customer's minimum entitlement will be the amount of power so sold to BPA, but not to exceed the customer's actual requirements (excess entitlements go first to customers of the same specified class). Entitlements of a customer under this subsection are in addition to entitlements under section 5 that are not subject to restriction. The Committee intends that BPA will reduce entitlements under this subsection, on a reasonable planning basis, to the extent the actual output of an acquired resource is less than its planned output, so that customers will have an obligation to plan additional resources to make up the difference. A copy of a letter from the Administrator of BPA to the Honorable James Weaver regarding the operation and effect of this subsection can be found later in this report.

Section 5(f) is a technical provision to insure that BPA has the ability to dispose of any temporary or incidentally surplus power under this Act and other laws applicable to BPA power sales.

Section 5(g) governs the offering of initial long-term contracts to BPA customers, including such matters as negotiation, timing of the contract offer, and date of contract effectiveness. Paragraph (6) specifies that the initial contracts with preference customers and Federal agency customers shall provide that during any period of insufficiency each such customer's contractual entitlement shall not be less than the amount of firm power such customer actually received from BPA in the year prior to the period of insufficiency. This aid to planning certainty during the initial contracts is intended to be compatible with, and not to diminish, the entitlements of such customers and other customers under section 5(e).

Section 6—Conservation and resource acquisition

Section 6(a) requires BPA to acquire all conservation resources (including renewable resources installed to reduce loads of residential or small commercial consumers) and to implement all conservation measures BPA determines to be consistent with the plan, or, in the absence of a plan, with the provisions of sections 4(e) (1) and (2). Such measures and resources include, but are not limited to, loans and grants for insulation and weatherization, as well as other listed items.

Section 6(b) requires BPA to acquire sufficient resources to meet its contractual obligations, after taking into account planned savings from conservation and other listed factors. Except as otherwise specifically provided, resource acquisitions shall be consistent with the plan, or, in the absence of a plan, with the provisions of sections 4(e) (1) and (2). Paragraph (3), dealing with resources acquired to replace Federal base system resources, clarifies that BPA will be able to require that such replacement resources be developed and operated consistently with section 4(e)(2) of this legislation. Paragraph (4) requires BPA to continue to acquire and implement conservation measures and conservation resources and certain renewable resources pursuant to section 6(a) regardless of other resource acquisitions. Paragraph (5) requires BPA to exclude the costs, if any, of construction work in progress (that portion of rates related to construction work investment included in a utility's rate base during the construction period by State regulatory authorities) from any payment BPA may make to investor-owned utilities for a resource acquired under this subsection from them or for power exchanged by them under section 5(c). This provision does not effect BPA's authority to make payments for other costs to investor-owned utilities under resource acquisition contracts such as payments upon completion or termination of construction for financing costs capitalized during construction. It should be noted, however, that section 5(c) expressly excludes from BPA's payments for power acquired under that section the costs of any resource that is terminated prior to commercial operation.

Section 6(c) establishes procedures which govern all BPA actions on major resources. Paragraph (1) contains detailed notice, hearing and decision making requirements which BPA must follow on any major resource proposal and which require BPA to make a determination on whether or not the proposal is consistent or inconsistent with the regional plan, or if no plan is in effect, consistent or inconsistent with the provisions of sections 4(e) (1) and (2). Paragraph (2) provides for the Council to determine whether or not such a proposed action is consistent or inconsistent with the plan, or during the two years preceding plan adoption, consistent or inconsistent with the provisions of sections 4(e) (1) and (2). Paragraph (3) provides that if either the Council or BPA determine that a major resource proposal is inconsistent with the plan, or, in the absence of a plan, inconsistent with the provisions of sections 4(e) (1) and (2), then BPA cannot implement such a proposal until the expenditure of funds for that purpose has been specifically authorized by Congress pursuant to bills reported from the committees of Congress having substantive jurisdiction over BPA's statutes. Paragraph (4) sets forth additional procedural steps BPA must follow prior to the implementation of any major resource proposal that BPA is authorized to undertake.

Section 6(d) authorizes BPA to acquire resources (other than major resources) that do not meet the provisions of section 4(e) (1) and (2), but that are experimental or developmental and that have the potential for providing cost-effective service.

Section 6(e) catalogues various of BPA's conservation and renewable resource authorities, and requires that maximum use be made of them. This subsection also requires that BPA work through its customers and other local entities to the extent practicable in making any direct arrangement with consumers.

Section 6(f) permits, under specified conditions, the funding or reimbursement by BPA of certain investigation and preconstruction expenses for resources that BPA may later acquire pursuant to section 6. However, this provision does not enable BPA to provide any such funding or reimbursment for resources that BPA foresees will be terminated or for termination of a resource as the result of a foreseeable and avoidable action of the resource's sponsor. This provision also protects against "bail-outs" by precluding BPA payments for costs incurred by a resource sponsor prior to the effective date of this Act or the effective date of any such agreement.

Section 6(g) provides for the coordination of Federal and State environmental impact statements.

Section 6(h) requires BPA to grant billing credits and provide services to any customer for independent conservation activities or resources undertaken by the customer or by political subdivisions to the extent that such actions reduce BPA's obligation to acquire additional resources. Independent conservation actions for purposes of this subsection are those that provide power savings beyond the savings provided through measures adopted as part of the plan or implemented or acquired by BPA in its implementation of this Act. Paragraph (2) provides for computation of the amount of energy and capacity on which credits shall be granted, and takes into account changes in customer power and reserve requirements on BPA. Paragraph (3) specifies the amount of the billing credit for conservation activities. Paragraph (4) specifies the amount for resources. Paragraph (5) clarifies that retail rate structures voluntarily implemented by BPA's customers shall qualify as measures for which billing credits shall be granted if such retail rate structures induce consumers to conserve or to install consumer-owned renewable resources. Paragraph (6) contains requirements to be met prior to a billing credit being granted, including notice provisions, inclusion in BPA's budget submittal to Congress, and acceptance by the customer of certain contract provisions. These provisions are, first, that certain resources be offered to others for participation to the extent of amounts in excess of the customer's reasonable load growth, and, second, that the operators of generating resources agree as a condition of receiving the credit that the resources will be operated in a manner compatible with the planning and operation of the region's power system. The first of these contract provisions is designed to prevent a "freeze out" of other BPA customers for regional resources being constructed to meet another customer's load growth. Thus, a utility's "reasonable load growth" is intended to be based on such utility's then current 20-year load/resource forecast (before adjustment for conservation activities independently undertaken).

Section 6(i) provides for BPA to include in its resource acquisition contracts, and billing credit contracts for major resources, provisions assuring BPA of effective oversight with respect to resource development, construction, scheduling, operations, costs and environmental protection, including protection of fish and wildlife affected by the development of such resources.

Section 6(j) reaffirms the requirement of the Federal Columbia River Transmission System Act that BPA is a wholly self-financed agency, that its obligations are not obligations of the United States of America nor secured by the full faith and credit of the United States of America, and requires that all offerings and promotional material for the sale of obligations secured by BPA shall include this disclaimer. This subsection is intended to make clear that there are no "Federal guarantees" supporting BPA's obligations, which instead are secured solely by BPA's own revenues from the sale of power and other services.

Section 6(k) requires that benefits under section 6 be distributed equitably throughout the region, consistent with the provisions of this legislation and BPA's obligations to particular customer classes.

Section 6(l) requires BPA to investigate: (1) possibilities for obtaining economic power supplies from renewable resources outside the region; and (2) opportunities for mutually beneficial interregional power exchanges pursuant to provisions of this section.

Section 6(m) directs BPA to determine that reasonable opportunities to participate in major resources offered to BPA for acquisition have been offered to all Pacific Northwest utilities, or that a reasonable equivalent participation opportunity exists.

Section 6(n) allows the Council to authorize BPA to implement a non-major resource proposal notwithstanding a finding by the Administrator that such a proposal is inconsistent with the plan or, in the absence of a plan, with the provisions of sections 4(e) (1) and (2).

Section 6(o) permits the Council and any customer of BPA to request BPA to take action to carry out its responsibilities under section 6 and to require BPA to act on such requests in a prompt and specified manner. This section allows the Administrator to decline to take the requested actions if, among other reasons, the Administrator determines that such a request would not be timely. This later provision is not intended to provide the Administrator with an open-ended excuse for not preceding with the requested action; rather, it is intended to allow the Administrator to decline to take requested actions until he and the Council have had the opportunity to become familiar with the requirements and resource acquisition criteria established by this legislation.

Section 7—Rates

Section 7(a) continues the requirement of existing law that BPA set its rates to recover, in total, the full cost (but not more than the full cost) of its financial obligations. This subsection also sets forth the applicable law and procedure upon which the Federal Energy Regulatory Commission shall approve and confirm BPA's periodic rate filings.

Section 7(b) contains the rate directives for power sold to meet the "general requirements" (defined in this subsection) of BPA's public body and cooperative customers and Federal agency customers, as well as power sold by BPA under the section 5(c) exchange. This will be BPA's lowest firm power rate, based on BPA's lowest cost resources. Subsection 7(b)(2) establishes a "rate ceiling" for BPA's preference customers, and specifies the method of calculating this ceiling, in order to insure such customers the cost benefits of their preference rights for sales under this subsection. Amounts not recoverable from preference customers because of this ceiling are to be recovered through supplemental rate charges for all other power sold by BPA under other provisions of section 7, as subsection 7(b)(3) specifies. Subsection 7(b)(4) defines "general requirements" as the power purchased by the relevant customers under section 5(b), exclusive of power used by the customer to serve any new large single loads (defined in section 3(13)). This provision thus affects power rates only, not the amount of power supplied to the customer under section 5(b).

Section 7(c) contains the rate directives for direct service industrial customers. Prior to July 1, 1985, the rates of these customers shall be set to recover both the costs of serving these loads and the otherwise unrecovered net costs of the section 5(c) exchange. After July 1, 1985, such rates are to be "equitable" in relation to certain specified retail industrial rates in the region; the method of determining the "equitable" rate is set forth in detail in subsection 7(c)(2). Subsection 7(c)(3) specifies that BPA shall adjust such rates to take into account the value of power system reserves made available to BPA through its rights to interrupt or curtail service to these customers.

Section 7(d)(1) permits BPA to offer rate discounts to customers with low system densities such as rural electric cooperatives with high distribution costs resulting from sparsely populated service areas.

Section 7(d)(2) authorizes BPA to establish a special rate for a direct-service industrial customer if (1) the customer's primary resource consists of raw materials indigenous to the region, and (2) all power sold to such a customer may be interrupted, curtailed or withdrawn to meet firm loads in the region. The Committee is aware of only one direct-service industrial customer, the Hanna Nickel Mining and Smelting Company, Riddle, Oregon, which would meet the criteria of this paragraph.

Section 7(e) clarifies that BPA may continue, as it does under existing law, to charge uniform rates for the sale of electric peaking capacity. This subsection also clarifies that the rate directives contained in this bill only govern the amount of money BPA is to collect from each class of customer and not the form of the rate used to collect that sum of money. For example, time-of-day rates, seasonal rates, rate structures designed to give BPA customers particular price signals, and other rate forms would be permissible.

Section 7(f) is the rate directives for the so-called "new resources rate" that BPA will charge customers for sales other than those to which a different rate directive applies. This rate directive applies only to firm power sales for use within the Pacific Northwest. It will be used, for example, for power sold to investor-owned utilities to meet their net requirements, and for power sold to preference customers for service to new large single loads.

Section 7(g) provides for the allocation of costs and benefits that are not otherwise allocated by other provisions of this bill or other applicable laws currently in effect.

Section 7(h) authorizes BPA to adjust power rates to include surcharges arising under section 4(f), and to allocate the revenues from any such surcharges in a manner that will achieve the conservation purposes of section 4(f). This provision specifically does not authorize BPA to collect in total more revenue than needed to meet its total costs, thus reaffirming the requirements of section 7(a).

Section 7(i) sets forth detailed procedures BPA must follow in establishing rates. In general, the procedures of this subsection parallel those followed by BPA today. However, this subsection will change these existing procedures in one respect since it contains a requirement that cross-examination must be allowed at BPA's rate hearings. This requirement is intended to eliminate the hearing officer's discretion to prohibit cross-examination altogether, not the hearing officer's ability to prevent the use of unwarranted cross-examination as a dilatory tactic. Section 7(i) also authorizes FERC to approve all of BPA's final rates on an interim basis but allows the Secretary of Energy to exercise such interim approval of such rates for application until such time as FERC establishes procedures of its own for interim approval of BPA's final rates.

Section 7(j) requires BPA, in its power billings to its customers, to break down the costs of different resource categories and to indicate the cost of new resources in relation to the average cost of BPA resources. This will allow BPA's customers to identify, for themselves and for their ratepayers, the costs of load growth to the region.

Section 7(k) governs the method of determining BPA's rates for the sale of nonfirm electric power to other regions of the United Stats. Such rates shall continue to be governed by existing law, and shall become effective after review by FERC under the procedures of the Federal Power Act.

Section 7(l) authorizes BPA top establish rates for the sale of power outside the United States (i.e., to Canada), and to negotiate such rates if appropriate to insure equitable treatment in relation to the rates charged for power purchased by BPA from entities outside the United States. The purpose of this provision is to protect regional consumers from the economic penalties of selling low and buying high in dealings with Canada.

Section 8—Amendments to existing law

Section 8(a) amends the Federal Columbia River Transmission System Act to permit BPA to use the BPA Fund to make short term power purchases to enable BPA to meet its obligations under the fish and wildlife provisions of this bill (e.g., to buy power to replace power generating capability that may be lost through a spill for fish passage purposes at a Federal dam). This is designed to reduce conflicts between fisheries agencies and BPA customers by ensuring that BPA can meet its obligations to each.

Sections 8(b) and (c) are technical amendments to the Federal Columbia River Transmission System Act needed to permit BPA to use its self-financing ability to carry out the provisions of this bill.

Section 8(d) amends the Federal Columbia River Transmission System Act with respect to BPA's borrowing authority. Under the authority of that Act, BPA is authorized to borrow by selling bonds to the United States Treasury to finance the construction of the Pacific Northwest's high-voltage transmission system.

Paragraph (1) of this subsection amends that Act to permit BPA to utilize its existing borrowing authority in order to implement this bill, but not for the purpose of acquiring under section 6 of this bill electric power from a generating facility with a planned capability of more than 50 average megawatts, or from any smaller generating facility other than one utilizing renewable resources.

Paragraph (2) of this subsection amends that Act to specify that the interest rate Treasury charges BPA shall be the rate at which Treasury borrows plus a sufficient markup to raise the total rate to the level of similar bonds sold by other government agencies. This paragraph also requires BPA to pay a one per cent interest rate penalty on any amount that is not repaid to Treasury in a timely fashion in any given year under applicable repayment criteria. The Committee included this interest penalty provision in S. 885 so as to provide BPA with an incentive to keep its repayment obligations current. However, the Committee is aware that BPA's revenues are dependent upon streamflows in the region and that these revenues fluctuate significantly in response to fluctuations in annual streamflows. Consequently, the Committee believes it would be appropriate for BPA to include as a cost in its rates an allowance to cover the possibility of less than average water conditions so as to enable it to make the timely repayments necessary to avoid the interest rate penalty.

Paragraph (3) of this subsection amends that Act by increasing BPA's existing $1,250,000,000 borrowing limit by an additional $1,250,000,000 after October 1, 1981, for the purpose of creating a special revolving account in the BPA fund for conservation and renewable resource loans and grants.

Section 8(e) is a technical provision to conform the definition of the Pacific Northwest region in the Act of August 31, 1964 (Public Law 88-552) to that used in this bill.

Section 8(f) amends the Federal Columbia River Transmission System Act to add provisions for annual impact aid payments by

BPA to State and local governments. Such payments are mandated if BPA completes, after the effective date of this Act, the initial construction of BPA major transmission facilities that are exempt from State and local real property taxes although located within the jurisdiction of a State or local government to whom such payments shall be made. Such payments are discretionary in other specified circumstances. Payments are to be made under a regionwide formula that BPA establishes by rule; the formula is to be based on certain specified factors. BPA's payment to any State and local government shall not exceed the amount that BPA determines would be paid to such government if the transmission facilities were not exempt from State and local real property taxes. As with all other transmission system costs, such payments should be charged to the transmission system and equitably allocated by BPA between Federal and non-Federal uses of the transmission system (see section 7(a)(2)(C)).

The purpose of this section is to compensate State and local governments for impacts incurred as a result of transmission facilities being constructed by BPA.

Section 9—Administrative provisions

Section 9(a) is a technical provision integrating BPA's general contracting authority under section 2(f) of the Bonneville Project Act with its contracting authority under this bill, and therefore avoiding potential conflicts between BPA's statutes with respect to contract matters.

Section 9(b) governs the relationship of BPA and the Department of Energy, and mandates that BPA, DOE and the Council are to assure the timely implementation of this bill in a sound and businesslike manner.

Section 9(c) insures that BPA sells outside the region (both directly and indirectly) only that power which is excess to the needs of the region.

Section 9(d) serves two purposes. First, it clarifies that utilities (unlike BPA) are free to dispose of their own non-Federal power (both firm and non-firm) so long as they do not thereby increase BPA's firm power obligations. Second, the subsection requires BPA to provide available services and facilities to such utilities for such sales, and prohibits BPA from discriminating in the provision of such services against any utility or group thereof on the basis of their independent development of resources. Both parts of this subsection therefore preserve the individual and collective independence of utilities and groups of utilities, as well as reaffirming the requirement contained in section 6 of the Federal Columbia River Transmission System Act that BPA make available on a fair and non-discriminatory basis Federal transmission system capacity in excess of the capacity required for power generated or acquired by the United States.

Section 9(e) governs judicial review of final actions under this bill, and includes (i) a list of final actions, (ii) provisions with respect to scope of review and the record on review, (iii) specification of when particular actions shall be deemed to be taken, and (iv) specification of the appropriate court and the time within which suits to challenge actions or decisions under this Act may be brought.

Section 9(f) contains provisions to insure that the ability of state and local governments to engage in tax-exempt municipal financing of power facilities is preserved but not extended, and that the regulations of the Internal Revenue Service applicable to industrial development bonds in general shall continue to apply to resources financed through tax-exempt bonds in the Pacific Northwest. Under section 5(b), BPA will be obligated to meet all the load growth requirements of requesting preference utilities from the effective date of this Act; this provision is designed to insure that utilities with tax-exempt status will be able to provide to BPA the resources necessary to meet this load growth without losing their tax-exempt status.

Section 9(g) provides that FERC shall convene a joint State board under section 209 of the Federal Power Act to assist it when it reviews rates paid by BPA to investor-owned utilities for power acquired from such utilities under sections 5(c) and 6 of this bill. This provision permits State regulatory agency participation in the review of rates that would otherwise not be subject to State jurisdiction because the relevant sales would be sale of power in interstate commerce.

Section 9(h) establishes terms and conditions for, and regulatory control over, the creation and operation of electric generating entities that may be formed in order to sell resources to BPA under this bill. This subsection provides that such generating entities do not become "electric utility companies" for purposes of the Public Utility Holding Company Act if a number of conditions are satisfied. These conditions include the review by the Securities and Exchange Commission for consistency with the policies specified in section 1(b) of that Act. These conditions are intended to preclude possible abuses which could result from unconditional exemption. The purpose of this subsection is to permit BPA to acquire resources from investor-owned utilities at the lowest obtainable power cost in order to avoid adverse impacts on the rates of BPA's other customers.

Section 9(i) sets forth additional services BPA is to provide its customers, at their request and expense, with respect to power sales and purchases of their own. This subsection essentially ratifies BPA's existing policies on services, except that paragraph (3) creates a limited and contingent priority on BPA's available services for the marketing of power from projects currently under construction in the region, should BPA decline to acquire these resources.

Section 9(j) requires the Council to prepare a report on retail rate structures that encourage cost-effective conservation and consumer-owned renewable resources and authorizes the Administrator to assist customers in analyzing and developing such rate structures.

Section 9(h) establishes within BPA an Assistant Administrator position for conservation and renewable resources.

Section 10—Savings Provisions

Section 10(a) is a savings provision to preserve the rights of States, local governments and utilities to (1) determine retail electric rates, (2) develop and implement conservation and resources, and (3) continue to make all energy facility siting decisions.

Section 10(b) preserves the rights and obligations of all parties under existing contracts so that this bill will not be construed as abrogating any contract. It is anticipated, however, that certain contracts such as power sale contracts will be surrendered voluntarily by BPA customers who wish to obtain new contracts under this bill.

Section 10(c) expressly preserves the provisions of Federal laws by which public bodies and cooperatives are entitled to preference and priority in the sale of Federally generated electric power. (The preference provisions of the Bonneville Project Act are expressly preserved in section 5(a) of this bill.)

Section 10(d) recognizes and clarifies that certain specified contracts executed pursuant to this bill shall not be affected by any subsequent judicial determination that any provision of this bill may be unconstitutional. The purpose of this provision is to permit the bill to be implemented, and contracts under the bill to be relied upon, on the schedule set forth in other provisions of the bill.

Section 10(e) preserves all treaty and other rights of Indian Tribes.

Section 10(f) relates to appropriations of water and to water rights generally. Paragraph (1) clarifies that this bill does not authorize any appropriation of water by any entity. Paragraph (2) states that in the implementation of this Act, the Federal government and its agents, permittees or licensees shall not appropriate, use, divert, dedicate, or claim water within any State except pursuant to substantive and procedural provisions of State law, regulation or rule of law. Paragraphs (3) and (4) preserve, respectively, State laws and interstate compacts governing the appropriation, use, diversion, dedication of, and claim to, water, and the rights of Indian Tribes. The intent of the latter provision is to preserve reserved rights that such tribes may possess.

Section 10(g) reaffirms the provisions of section 6(j) by making clear that BPA alone, not the United States of America or any other Federal entity, is obligated to perform any new contracts executed by BPA pursuant to this bill. Similarly, this subsection makes clear that the United States of America is not obligated to perform any contracts that may be executed by the Council.

Section 10(h) affirms the reservation under law of electric power for use in the State of Montana by reason of the construction of Hungry Horse and Libby Dams and Reservoirs within that State, as well as the reservation of 50 percent of the power produced at Libby Reregulating Dam, if built.

This section establishes the method of determining the effective date of this bill after it has become an Act.

COMMITTEE ACTION AND RECOMMENDATION

The Subcommittee on Water and Power Resources held hearings on S. 885 and related legislation on July 30 and September 8, 25, and 27, 1979. The subcommittee met and considered the legislation on June 24, 25, and July 1, 21, and 22, 1980, and on July 22, 1980, the Subcommittee recommended S. 885, with an amendment, to the Full Committee on Interior and Insular Affairs. Following consideration of the legislation on August 26, 27, and 28, and September 3 and 4, 1980, the Full Committee, on September 4, by a vote of 28 ayes and 14 noes, ordered S. 885 favorably reported with an amendment in the nature of a substitute and recommends its enactment by the House.

INFLATIONARY IMPACT

In the judgment of the Committee on Interior and Insular Affairs, enactment of S. 885, as amended, will have a minimal inflationary impact. To the extent that the energy conservation provisions of this legislation reduce the demand for high cost alternative energy sources, it should have a positive effect on inflation and should result in significant cost savings for the region.

COST AND BUDGET ACT COMPLIANCE

The Committee on Interior and Insular Affairs concurs with and accepts as its own the analysis of the Congressional Budget Office which follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 10, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for S. 885, Pacific Northwest Electric Power Planning and Conservation Act.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, SEPTEMBER 10, 1980

1. Bill number: S. 885.

2. Bill title: Pacific Northwest Electric Power Planning and Conservation Act.

3. Bill status: As ordered reported by the House Committee on Interior and Insular Affairs, September 4, 1980.

4. Bill purpose: The bill establishes programs and procedures to encourage conservation and efficiency in the use of electric power and ensure public participation in the development of regional plans for energy conservation in the Pacific Northwest. It also provides for

the mitigation of adverse impacts from hydroelectric projects on fish and wildlife in the region. Subject to appropriation action, the bill authorizes an additional $1.25 billion in borrowing authority for the Bonneville Power Administration (BPA), effective in fiscal year 1982, for the purpose of making conservation and renewable resource loans and grants.

5. Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Authorization level		1,250			
Estimated net outlays		200	222	186	150

The costs of this bill fall within budget function 270.

6. Basis of estimate: The Bonneville Power Administration is required by law to operate on a business-like basis. It obtains its capital by borrowing from the Treasury and must collect through rates enough to cover retirement of the principal indebtedness and payment of interest costs in addition to other operating costs. The Federal Columbia River Transmission System Act of 1974 provided BPA with $1.25 billion in authority to borrow from the Treasury, and to date approximately two-thirds of that amount remains available. Under the 1974 Act, however, BPA can only borrow to build transmission lines. This bill broadens the potential uses of the existing borrowing authority to include activities to conserve existing resources and mitigate effects on fish and wildlife. The bill provides an additional $1.25 billion in borrowing authority to BPA effective October 1, 1981, for conservation and renewable resource loans and grants.

Since rates must be structured to cover all costs, BPA receipts and outlays should be equal in the long run. However, in the short-run, there can be a significant budget impact. For the purpose of this estimate, it is assumed that the bill will be passed early in fiscal year 1981. Estimated outlays are based on BPA's preliminary expectation that it will invest about $950 million in conservation and related measures between now and 1985 (approximately $200 million in 1982, and $250 million per year thereafter). These estimates will be refined as the regional electric power plan mandated by the bill is developed, and as results from existing pilot programs become available. No additional outlays are anticipated in fiscal year 1981, because these programs have a start-up time of one-to-two years.

The additional expenditures will be partially offset by additional receipts from loan repayments and rate increases. These receipts are estimated to total approximately $190 million by 1985, based on the assumption that BPA will set its rates at a level that will cover additional expenses, including 13 percent interest plus an amount sufficient to retire the principal in 20 years.

The bill would permit eligible utilities to dedicate capacity to BPA without losing the right to issue bonds that bear tax-exempt interest. There will be no direct revenue loss to the federal government from enactment of this provision.

7. Estimate comparison: None.

8. Previous CBO estimate: On April 15, 1980, a CBO cost estimate was prepared for S. 885, as ordered reported by the House Committee on Interstate and Foreign Commerce. This bill differs significantly from that version of the bill; however, BPA projects that the same investment will be necessary under either bill. Thus, the cost estimates for the two versions of the bill are the same.

9. Estimate prepared by: Debbie Goldberg.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

OVERSIGHT STATEMENT

The Committee on Interior and Insular Affairs will exercise continuing oversight responsibility over the implementation of the provisions and authorities of S. 885, as amended, if enacted. No oversight recommendation has been received pursuant to Rule X, Clause 2(b)(2).

EXECUTIVE COMMUNICATIONS

By letter dated March 11, 1980, the Department of Energy reported its comments and recommendations on S. 885 to the Committee on Interior and Insular Affairs. This letter, which included numerous attachments which have been retained in the Committee's files on this legislation, is set forth below in its entirety. There is also set forth below in its entirety a letter from the Adminstrator of the Bonneville Power Administration to the Honorable James Weaver regarding the operation and effect of Section 5(e) of this legislation.

DEPARTMENT OF ENERGY,
Washington, D.C., March 11, 1980.

Hon. ABRAHAM KAZEN, Jr.
Chairman, Subcommittee on Water and Power, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. KAZEN: This is in response to your request for the views of the Department of Energy on S. 885, the "Pacific Northwest Electric Power Planning and Conservation Act" as passed by the United States Senate on August 3, 1979. The bill contains many significant differences from H.R. 3508, the companion bill upon which George S. McIsaac testified before your subcommittee on July 30, 1979.

The bill, as passed by the Senate, generally is consistent with the President's energy program. However, the Administration continues to urge certain provisions be modified as follows:

First, in section 3(o) at page 6, line 5 of the bill, strike the word "four" and insert the word "one." A load of 100 horsepower, as provided in H.R. 3508, would be consistent with the intent of the legislation, as expressed in the Senate Energy Committee's report, to enable residential users to enjoy the Federal power rate. At the request of the Senate Energy Committee, the Bonneville Power Administration made a study of the impact of different levels of load upon service to family farms. That study reveals that 85 percent of the farm irrigation loads in the region are served by less than 100 horsepower. Moreover, it appears that few farm irrigation loads that exceed 100 horsepower can be identified as "family farms." Most are large commercial farms operated by corporations.

Second, sections 4 and 6 deal with the composition and authority of the Pacific Northwest Electric Power Planning Council. These provisions vest substantive executive powers in individuals who are not appointed by the President or the head of a cabinet department and appear to violate the Appointments Clause of the Constitution, Article II, Section 2, Clause 2. The Department of Justice has taken a similar position as expressed in its letter to you dated January 9, 1980. We defer to the views of the Department of Justice on this matter.

Third, the procedures in section 6(c) for acquiring a major resource that is consistent with the adopted regional plan are very complex and cumbersome. Two separate announcements of the Administrator's intention to acquire the resource, one published in the Federal Register, are required. The procedures also mandate two 90-day waiting periods and elaborate submissions of records and documents to the Congressional committees. The specification of these requirements in the law opens the process to litigation. We understand the desire of the Congress for procedural safeguards to ensure that the Administrator is acting consistent with the plan. A simpler and more efficient procedure should be devised for acquisitions consistent with the plan. We understand that others have voiced similar concerns. The Administration would be willing to work with the Committee to develop less cumbersome procedures.

Fourth, subsections (a) and (i) of section 7 create several problems by eliminating the Secretary of Energy from the interim confirmation of rates and by introducing detailed mandatory procedural provisions for setting rates.

In December 1978, the Secretary of Energy signed Delegation Order No. 0204-33, attached hereto, that delegated to the Assistant Secretary for Resource Applications the authority, acting by the Administrators of the five power marketing administrations, to develop power and transmission rates and to confirm, approve and place the rates in effect on an interim basis. The order also delegated to the Federal Energy Regulatory Commission the authority to confirm and approve the rates on a final basis. If the rates finally approved are lower than the rates effective on an interim basis, any overpayments will be refunded with interest. 43 Fed. Reg. 60636 (1978). Under this delegation, the Assistant Secretary has issued 15 rate orders. Seven of these orders extend existing rates and eight place new rates into effect on an interim basis. Copies of the eight orders on new rates are attached. The system works well. The Assistant Secretary and his staff work closely with the Administrators of the five power marketing administrations (PMAs) and their staffs in the ratemaking process. As a result, the Assistant Secretary moves swiftly to confirm, approve and place rates into effect on an interim basis to meet contract deadlines and repayment obligations.

We recommend that the Congress not transfer the authority for Bonneville rates presently in the Assistant Secretary for Resource

Applications to the FERC. Accordingly, we recommend that section 7(a) be amended by inserting on page 29, line 8, after "effective" the following: "on an interim basis upon confirmation and approval by the Secretary of Energy, and shall become effective on a final basis" and that section 7(i)(6) be amended accordingly.

The Department of Energy is in the process of developing a system of ratemaking procedures for the Bonneville Power Administration and the other four power marketing administrations that is responsive to the special needs of Federal power ratemaking in the Department of Energy. The proposed procedures were published in the Federal Register on July 5, 1979, 44 Fed. Reg. 39184. The final procedures, as revised based on public comment, soon will be placed into effect. These procedures are based on the experience gained by the PMAs since 1975 in conducting more than a dozen rate adjustment proceedings. They include the procedures for the Bureau of Reclamation, which were published on August 15, 1975, 40 Fed. Reg. 3441, and the procedures for the Bonneville Power Administration, which were published on December 14, 1977, 42 Fed. Reg. 62950. The procedures used in these proceedings by the PMAs have received substantial acceptance by the customers.

We oppose the creation of special procedural provisions for Bonneville rates. These provisions would be difficult to implement and we believe would be unworkable.

Another matter that concerns us deeply is the relationship between the rate provisions of Section 7, both substantive and procedural, and the current ratemaking proceeding for Bonneville's power rates placed into effect on an interim basis on December 20, 1979. We do not believe that Congress intends to upset this proceeding. To make this clear, we recommend that a subsection be added either in Section 7 or in Section 9 providing that: "( ) The provisions of Section 7 do not apply to the system rate increases effective December 20, 1979."

Fifth, the Administration is concerned about several of the financial aspects of the bill. The new unlimited authority for Bonneville to borrow from the Treasury could be used as a back-up for tax exempt bonds issued to finance public utility power projects that would sell power resources to the Administrator. The Administration strongly objects to such financing arrangements. The Administration has recommended that the borrowing authority be limited to transmission expenditures, as found in current law, and to conservation and small resource acquisitions of 25 MW or less. The Administration also recommends that Bonneville continue to borrow from the Treasury at a triple-A utility rate rather than at the lower interest rate established in the bill. All of these, and other related, points were raised in more detail and specific Administration changes were proposed by Assistant Treasury Secretary Altman in his testimony before your Committee on September 25, 1979. The Administration continues to oppose the financial provisions of section 8(b). Attached is a letter dated July 15, 1979 from former Assistant Secretary McIssac to Senator Henry Jackson that details our objections, and proposes amendments, to the provisions of section 8(b) as well as other sections of S. 885.

Sixth, the Department of Energy desires the opportunity to work with the Committee staff to consider the addition of a provision that would cause the Council to undertake detailed studies of the feasibility and desirability of mandatory surcharges and of two-tiered wholesale rates as devices to promote energy conservation.

For the foregoing reasons, the Department of Energy supports the enactment of S. 885 with the comments and recommendations explained above.

This report has been coordinated within the Department of Energy in accordance with procedures prescribed by the Secretary of Energy.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

ERIC J. FYGI,
Deputy General Counsel.

Attachment.

DEPARTMENT OF ENERGY,
BONNEVILLE POWER ADMINISTRATION,
Portland, Oreg., August 13, 1980.

Hon. JIM WEAVER,
House of Representatives,
Washington, D.C.

DEAR MR. WEAVER: Your letter of July 28, 1980, requests that we provide you a summary of the "expected" Bonneville Power Administration (BPA) contractual terms relating to the application "contractual entitlements" provisions in Section 5(e) of S. 885. As I am sure you will understand, BPA has not begun drafting or negotiating contracts to implement the legislation. The answer, therefore, must be based upon our interpretation of the legislation and the application of current regional utility contracting and planning procedures.

Section 5(e) would be effective only in the event the regional planning provisions in the legislation fail and BPA is unable to acquire adequate resources, including conservation, to meet its contracted loads under Section 5. At that point, BPA is obligated under Section 5(b)(5) to "restrict" its "contractual obligations to meet loads." That section requires BPA allow a reasonable minimum period between the notice to its customers of its inability to acquire adequate resources and the date such restriction can be imposed.

The second factor in applying Section 5(e) is determining BPA's assumptions for planning and contracting purposes as they relate to resources BPA acquires in the future. When BPA executes a contract for acquisition of a resource's capability, it will necessarily assume for BPA's 20-year load-resource forecast the amount of peaking and energy capability that resource will produce once it is commercially operable. In each ensuing year BPA will make a similar resource capability analysis based upon current knowledge of such matters as project construction progress, fuel supply, forecast operation and maintenance requirements, etc. Each utility buying power from BPA will make assumptions in a similar manner for resources that utility independently develops for its own use.

In our view, the provisions implementing Section 5(e) must provide a practical planning division between BPA and the utility entitled to power under this section. Therefore, just as Section 5(b)(5) requires a "reasonable minimum period" for notice of restriction, we would expect that the contracts will also provide a similar period for reducing the power entitlements under Section 5(e) if a resource does not measure up to its planned capability. If a project fails to achieve its forecast capability, BPA's power sales obligation (the utility's entitlement to purchase under Section 5(e)) after a "reasonable minimum period" would also be reduced under the terms of the contract. The language of Section 5(e) clearly anticipates this reduction by stating the entitlement in terms of electric power acquired from a customer rather than stating it in terms of "capability acquired."

The determination of the actual amounts of entitlements should not be difficult. BPA currently annually reviews the power it forecasts will be available from various projects whose capability it markets based upon generally accepted utility and engineering principles. This forecast establishes both the amount of reliable capacity and energy that each generating plant will provide the system. It seems reasonable that these same procedures, updated from time to time to take into account the latest operating experience and technology, would be applied in future BPA resource and power sales contracts. We do not expect to enter into a contract which would establish a "one-time" capability for use for the term of the contract. Rather, the amount of project capability attributed to a project will be allowed to vary as experience and conditions dictate.

Using your example, if a project scheduled to produce at a 70-percent plant factor only produces at a 30-percent factor, BPA's contractural obligations must respond accordingly. First, our estimate of future capability of that project used in load/resource estimates would be reviewed to determine what adjustments should be made. If we determined the operation of the plant could not be improved, BPA would reduce its forecast of available energy in future years to reflect the 30-percent plant factor. Concurrently, BPA would begin to acquire adequate replacement power on a short-term basis and identify resources for the long term under the terms of Section 6 of the legislation.

If at the time of determination BPA was operating under a notice of insufficiency given in accordance with Section 5(b)(5), BPA would give the utility with the entitlement notice it was reducing its future entitlement to reflect the lower plant factor. The lower entitlement would be effective after a "reasonable period" specified in the contract to allow the utility time to adjust its resource planning and acquisition program. What is a reasonable time for making alternative arrangements will be a subject for negotiation, but probably something in the order of 5–10 years would be reasonable.

We do not foresee any major problems in negotiating contractural provisions which will carry out fairly the intent of Section 5(e) while protecting against possible abuses. We do anticipate the contractual negotiations to implement Section 5 to be extensive and subject to intense scrutiny by many concerned groups. Please call us if we can be of further assistance on this matter.

Sincerely,

STERLING MUNRO, *Administrator.*

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 18, 1974 (88 Stat. 1376)

* * * * * * *

SEC. 7. (*a*) Subject to the provisions of section 5 of this Act the Administrator may purchase or lease or otherwise acquire and hold such real and personal property in the name of the United States as he deems necessary or appropriate to carry out his duties pursuant to law.

(b)(1) From amounts available to the Administrator from the fund under section 11 (b)(2), the Administrator shall make annual impact aid payments to State and local governments having within their jurisdiction the transmission facilities described in paragraph (2). The Administrator may also make impact aid payments to State and local governments with respect to transmission facilities of the Administrator other than those described in paragraph (2) where the construction of such facilities, or any substantial modification thereof, is completed after the date of the enactment of the Pacific Northwest Electric Power Planning and Conservation Act and the Administrator determines that such facilities have a substantial impact on the State and local government concerned.

(2) The transmission facilities for which payments shall be made under this subsection are any major transmission facilities—

(A) which are owned by the Bonneville Power Administration;

(B) which are exempt from State and local real property taxes; and

(C) initial construction of which was completed after the date of the enactment of the Pacific Northwest Electric Power Planning and Conservation Act.

(3)(A) The payments made under this subsection for any year shall be determined on the basis of a regionwide formula established by the Administrator by rule, after notice and opportunity for public hearing and after consultation with State and local governments in the region and the Administrator's customers in the region. Such formula shall provide for an annual payment based on (i) the amount of land and interests in land acquired by the Administrator for purposes of constructing the facility, and the value of the facilities constructed thereon, and (ii) the costs of all governmental services related to the facility and an appropriate share of the general government expenses which are ordinarily paid from State and local real property taxes. No annual payment to any such State or local government may exceed such amount as the Administrator determines would be paid to such government during that year if the transmission facilities were not exempt from State and local real property taxation.

* * * * * * *

SEC. 11. (a) There is hereby established in the Treasury of the United State a Bonneville Power Administration fund (hereinafter referred to as the "fund"). The fund shall consist of (1) all receipts, collections, and recoveries of the Administrator in cash from all sources, including trust funds, (2) all proceeds derived from the sale of bonds by the Administrator, (3) any appropriations made by the Congress for the fund, and (4) the following funds which are hereby transferred to the Administrator: (i) all moneys in the special account in the Treasury established pursuant to Executive Order Numbered 8526 dated August 26, 1940, (ii) the unexpended balances in the continuing fund established by the provisions of section 11 of the Bonneville Project Act of August 20, 1937 (16 U.S.C. 831 et seq.), and (iii) the unexpended balances of funds appropriated or otherwise made available for the Bonneville Power Administration. All funds transferred hereunder shall be available for expenditure by the Secretary of the Interior, acting by and through the Administrator, as authorized in this Act and any other Act relating to the Federal Columbia River transmission system, subject to such limitations as may be prescribed by any applicable appropriation act effective during such period as may elapse between their transfer and the approval by the Congress of the first subsequent annual budget program of the Administrator.

(b) The Administrator may make expenditures from the fund, which shall have been included in his annual budget submitted to Congress, without further appropriation and without fiscal year limitation, but within such specific directives or limitations as may be included in appropriation acts, for any purpose necessary or appropriate to carry out the duties imposed upon the Administrator pursuant to law, including but not limited to—

(1) construction, acquisition, and replacement of (i) the transmission system, including facilities and structures appurtenant thereto, and (ii) additions, improvements, and betterments thereto (hereinafter in this Act referred to as "transmission system");

(2) operation, maintenance, repair, and relocation, to the extent such relocation is not provided for under subsection (1) above, of the transmission system;

(3) electrical research, development, experimentation, tests, and investigation related to construction, operation, and maintenance of transmission systems and facilities;

(4) marketing of electric power;

(5) transmission over facilities of others and rental, lease, or lease-purchase of facilities;

(6) purchase of electric power (including the entitlement of electric plant capability) (i) on a short-term basis to meet temporary deficiencies in electric power which the Administrator is obligated by contract to supply, or (ii) if such purchase has been heretofore authorized or is made with funds expressly appropriated for such purchase by the Congress, or (iii) if to be paid for with funds provided by other entities for such purpose under a trust or agency arrangement **[;]**, *or (iv) on a short term basis to meet the Administrator's obligations under section 4(h)(2) of the Pacific Northwest Electric Power Planning and Conservation Act;*

(7) defraying emergency expenses or insuring continuous operation;

(8) paying the interest on, premiums, discounts, and expenses, if any, in connection with the issuance of, and principal of all bonds issued under section 13(a) of this Act, including provision for and maintenance of reserve and other funds established in connection therewith;

(9) making such payments to the credit of the reclamation fund or other funds as are required by or pursuant to law to be made into such funds in connection with reclamation projects in the Pacific Northwest: *Provided,* That this clause shall not be construed as permitting the use of revenues for repayment of costs allocated to irrigation at any project except as otherwise expressly authorized by law;

(10) making payments to the credit of miscellaneous receipts of the Treasury for all unpaid costs required by or pursuant to law to be charged to and returned to the general fund of the Treasury for the repayment of the Federal investment in the Federal Columbia River Power System from electric power marketed by the Administrator; **[**and**]**

(11) acquiring such goods and services, and paying dues and membership fees in such professional, utility, industry, and other societies, associations, and institutes, together with expenses related to such memberships, including but not limited to the acquisitions and payments set forth in the general provisions of the annual appropriations Act for the Department of Interior, as the Administrator determines to be necessary or appropriate in carrying out the purposes of this Act **[**.**]** *; and*

(12) making such payments, as shall be required to carry out the purposes and provisions of the Pacific Northwest Electric Power Planning and Conservation Act.

(c) Moneys heretofore or hereafter appropriated shall be used only for the purposes for which appropriated, and moneys received by the Administrator in trust shall be used only for carrying out such trust. The provisions of the Government Corporation Control Act (31 U.S.C. 841 et seq.) shall be applicable to the Administrator in the same manner as they are applied to the wholly owned Government corporations named in section 101 of such Act (31 U.S.C. 846), but nothing in the proviso of section 850 of title 31, United States Code, shall be construed as affecting the powers granted in subsection (b)(11) of this section and in sections 2(f), 10(b), and 12(a) of the Bonneville Project Act (16 U.S.C. 832 et seq.).

(d) Notwithstanding the provisions of sections 105 and 106 of the Government Corporation Control Act, the financial transactions of the Administrator shall be audited by the Comptroller General at such times and to such extent as the Comptroller General deems necessary, and reports of the results of each such audit shall be made to the Congress within 6½ months following the end of the fiscal year covered by the audit.

* * * * * * *

SEC. 13. (a) The Administrator is authorized *(1)* to issue and sell to the Secretary of the Treasury from time to time in the name and for and on behalf of the Bonneville Power Administration bonds, notes, and other evidences of indebtedness (in this Act collectively referred to as "bonds") to assist in financing the construction, acquisition, and replacement of the transmission system, *and to implement the Administrator's authority pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (including his authority to provide financial assistance for conservation measures, renewable resources, and fish and wildlife, but not including the authority to acquire under section 6 of that Act electric power from any generating facility not utilizing a renewable resource or from a generating facility utilizing a renewable resource and having a planned capability greater than 50 average megawatts)*, and *(2)* to issue and sell bonds to refund such bonds. Such bonds shall be in such forms and denominations, bear such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary of the Treasury taking into account terms and conditions prevailing in the market for similar bonds, the useful life of the facilities for which the bonds are issued, and financing practices of the utility industry. Refunding provisions may be prescribed by the Administrator. Such bonds shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities, plus an amount in the judgment of the Secretary of the Treasury to provide for a rate comparable to the rates prevailing in the market for similar bonds *issued by government corporations. Based on information provided by the Administrator to the Secretary of the Treasury, the interest rate determined pursuant to the immediately preceding sentence will be increased by one percent thereof for each immediately preceding consecutive fiscal year, beginning with the fiscal year in which this Act becomes effective, that the applicable financial reports, including current repayment studies, of the Administrator show repayment criteria not being met.*

The aggregate principal amount of any such bonds outstanding at any one time shall not exceed $1,250,000,000 *prior to October 1, 1981. Such aggregate principal limitation shall be increased by an additional $1,250,000,000 after October 1, 1981, as provided in advance in annual appropriations Acts, and such increased amount shall be reserved for the purpose of providing funds for conservation and renewable resource loans and grants in a special revolving account created therefor in the Fund. The funds from such revolving account shall not be deemed State or local funds.*

(b) The principal of, premiums, if any, and interest on such bonds shall be payable solely from the Administrator's net proceeds as hereinafter defined. "Net proceeds" shall mean for the purposes of this section the remainder of the Administrator's gross receipts from all sources after first deducting trust funds and the costs listed in section 11(b)(2) through 11(b)(7) **[**and 11(b)(11)**]**, *11(b)(11), and 11(b)(12)*, and shall include reserve or other funds created from such receipts.

(c) The Secretary of the Treasury shall purchase forthwith any bonds issued by the Administrator under this Act and for that purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include any purchases of the bonds issued by the Administrator under this Act. The Secretary of the Treasury may, at any time, sell any of the bonds acquired by him under this Act. All redemptions, purchases, and sales by the Secretary of the Treasury of such bonds shall be treated as public debt transactions of the United States.

* * * * * * *

ACT OF AUGUST 31, 1964 (78 Stat. 756)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, as used in this Act—

(a) "Secretary" means the Secretary of the Interior.

(b) "Pacific Northwest" means (1) the region consisting of the States of Oregon and Washington, the State of Montana west of the Continentual Divide, and such portions of the States of Nevada, Utah, and Wyoming within the Columbia drainage basin and of the State of Idaho as the Secretary may determine to be within the marketing area of the Federal Columbia River power system, and [(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a distribution cooperative which has (i) no generating facilities, and (ii) a distribution system from which it serves both within and without said region.] *(2) any contiguous areas, not in excess of seventy-five airline miles from said region, which are a part of the service area of a rural electric cooperative served by the Administrator on the effective date of the Pacific Northwest Electric Power Planning and Conservation Act which has a distribution system from which it serves both within and without said region.*

(c) "Surplus energy" means electric energy generated at Federal hydroelectric plants in the Pacific Northwest which would otherwise be wasted because of the lack of a market therefor in the Pacific Northwest at any established rate.

(d) "Surplus peaking capacity" means electric peaking capacity at Federal hydroelectric plants in the Pacific Northwest for which there is no demand in the Pacific Northwest at any established rate.

(e) "Non-Federal utility" means any utility not owned or controlled by the United States, including any entity (1) which such a utility owns or controls, in whole or in part, or is controlled by, (2) which is controlled by those controlling such utility, or (3) of which such utility is a member.

(f) "Energy requirements of any Pacific Northwest customer" means the full requirements for electric energy of (1) any purchaser from the United States for direct consumption in the Pacific Northwest, and (2) any non-Federal utility in that region in excess of (i) the hydroelectric energy available for its own use from its generating plants in the Pacific Northwest, and (ii) any additional energy available for use in the Pacific Northwest which, under a then existing contract, the utility (A) can obtain at no higher incremental cost than the rate charged by the United States, or (B) is required to accept.

(g) Terms not defined herein shall, unless the context requires otherwise, have the meaning given them in the March 1949 Glossary of Important Power and Rate Terms prepared under the supervision of the Federal Power Commission

* * * * * * *

SUPPLEMENTAL VIEWS OF REP. PAT WILLIAMS

In an effort to prepare the Pacific Northwest Regional Power Planning legislation in the most acceptable version possible to the four states affected by the bill, I offered a package of amendments which were negotiated by the Governors of the states. The amendments were accepted by the Committee.

However, there was a certain confusion involved in the actual presentation of the amendments to the Committee. Due to a simple error in the stapling together of the amendments, they were handed out in bloc, rather than individually. The hearing record shows that the amendments were duly considered, and, for the most part, fully discussed; however, to assure that the consideration not be perceived as abridged, I am including herein an explanation of each amendment.

COUNCIL STRUCTURE AND APPOINTMENT

This amendment creates an eight member Council with two members appointed by the Governor of each of the four states; Washington, Oregon, Idaho and Montana.

The amendment responds to the concern that each state should have equal representation on the Council. At the same time, the amendment provides a Council large enough to assure that diverse energy interests in the region will have adequate representation of their views on the Council.

The amendment provides for Council members to be appointed by the Governors rather than by the Secretary of Energy. Gubernatorial appointment will ensure regional control over regional power matters and will provide a more meaningful check on the Bonneville Administrator. The Appointments Clause of the Constitution (Art. 2, Sec. 2, Cl. 2) has been raised as a possible impediment to State appointment of Council members. Careful constitutional research, however, shows that the Congress may share with the states authorities such as those given to the Council. The Appointments Clause relates to separation of powers between the branches of the national government, not to mechanisms such as the Council, in which state officials would be acting pursuant to state authority within the framework of a federal law.

INTERIM FEDERALLY APPOINTED COUNCIL

This amendment provides for temporary appointment of a federal "back-up" council in the event that a state-appointed council could not be formed under the act, or was found to be invalid by a court.

There is a general consensus among those who have studied the question that the state-appointed council is a valid constitutional sharing of state and federal powers. However there is a recognition of some uncertainty on the question. In the event that the state-appointed council cannot act as contemplated, the amendment would establish a federally appointed council to act until such time as a valid state council could be formed.

The amendment calls for the Secretary of Energy to appoint new council members in a way which would ensure the continuity of council functions. Presumably, the Secretary would appoint those members already serving from the states. The appointments of interim federal council members would cease at such time as the defect that caused the failure of the state-appointed council was cured. If it required Congressional action to cure the defect, the Secretary is required to submit his recommendations on legislation to the Congress, and if Congress did not take action within two full Congresses, the Council would terminate. With the termination of the Council, the Administrator would be required to bring all major resource decisions to the Congress for resolution through the appropriations process.

The "sunset" for the federal council is preferred by most elements in the region to continuation of a new federal agency. The "sunset" of the federal council on a date certain will give Congress the impetus to act to cure whatever defects may have caused the failure of the state-appointed council.

VOTES REQUIRED FOR APPROVAL OF PLAN

An amendment to section 4(a)(6) retains language of the Subcommittee bill calling for at least one vote from each state for adoption of the plan, yet provides that a plan can be adopted when there are at least six votes for it, even though both members from one state may vote against the plan. The amendment retains the principle that more than a simple majority should be required for adoption, but does not allow one state to block passage. A one-state veto of the plan might lead to the adoption of a plan that represented only the lowest common denominator, rather than a true choice among alternative paths. It would also allow one state to hold the plan hostage in order to gain advantage in interstate disputes that may have nothing to do with the plan. Finally, a one state veto does not allow a state to abstain for political or conflict-of-interest reasons without destroying the plan. This amendment addressed these problems. It is also important to note that a one-state veto is not needed to protect a state against being forced to accept resources it does not want. Section 10(a) of the bill explicitly preserves state siting authority unimpaired, regardless of the provisions of the plan.

TECHNICAL AND CONFORMING AMENDMENTS

Several technical amendments were made to Section 4 in order to conform the bill to a state-appointed rather than a federal council. Specifically, an amendment deleted references to federal law regarding employees of the Council in Section 4(a)(8). Sections 4(a)(10), (11) and (12) were amended to delete references to the contracting requirements of the Department of Energy, to the provision of services by the General Services Administrator, and to publication in the Federal Register. Section 4(a)(14) was amended to make clear that state support staff to Council members can be funded through the Council's budget.

Section 4(e)(3) was amended in several places to clarify the provisions describing the regional plan. First, the phrase "but not limited to" in this section was deleted in order to make clear that the plan is to cover only those elements set forth in the bill. Since all that could conceivably be put in the plan is quite comprehensively described in section 4(e)(3), the phrase is not necessary and increases the chance that the state-appointed Council might stray into areas not constitutionally permitted. The amendment also signals the Congress' intent that the Council stay to the planning agenda. The addition of the phrase "which shall be set forth in such detail as the Council determines to be appropriate," allows the Council to determine the appropriate level of detail for the plan. A regional plan of this nature has never before been attempted, and the Council needs flexibility to approach this unique task. the Council will have sufficient incentive to make the plan as detailed as possible, because the greater the detail, the greater will be the Council's ability to determine the energy future of the region. An amendment to section 4(e)(3)(D) makes clear that the plan will contain a resource forecast, setting out what types of resources are to be acquired, as well as a demand forecast, delineating amounts of power which will be required. One other amendment, the change of 'may' to 'shall' in section 4(e)(3)(D), requires the Council to determine the approximate amount of power the administrator should acquire and the types of resources from which he should acquire that power. These are essential elements of the plan and should not be discretionary.

DELETION OF REVIEW OF 10 PERCENT CONSERVATION ADVANTAGE

The deletion of section 4(k) eliminates the review of the 10 percent advantage given conservation in the bill. This amendment makes a firm statement by Congress that conservation is preferable to the acquisition of new resources. The 10 percent advantage was added to the bill by Senator Hatfield in a provision that a conservation measure or small renewable resource should be considered as cost-effective as a conventional resource even though it is up to ten per cent more expensive than the conventional resource. This addresses the traditional problems associated with conventional resources, specifically cost overruns which raise their costs well above original estimates, and the use of fuel which is subject to drastic price increases. The costs to society which are not included in cost estimates of conventional resources include air pollution, water pollution, acid rain, and depletion of unrenewable resources. These are not factors in conservation or small renewable resources.

CONSISTENCY REVIEW

An amendment to section 6(c)(2) requires that the Council act within sixty days if it chooses to exercise review of the Administrator's resource acquisition decisions, and deletes the second part of the section which stated that the Council was deemed to have found the Administrator's decisions to be consistent with the regional plan unless it found otherwise. This amendment assures the region that consistency review will be exercised quickly and that the Council will not be taking a stance on the question of whether or not the Administrator's resource acquisition decisions are consistent with the plan merely by deciding not to exercise review. A review of the Administrator's actions is still possible, but the Council is not forced to make that review.

PAT WILLIAMS.

ADDITIONAL VIEWS OF REP. B. F. VENTO

During full Committee consideration of S. 885, the Committee discussed, but came to no conclusion on, the issue of bank underwriting of the revenue bonds authorized by this legislation.

This is an extremely complex area of public policy which has broad implications for municipalities, the banking and security industry, as well as the investing public. The Glass-Steagall Act prohibits banks from engaging in investment banking. Any action by the Interior and Insular Affairs Committee would have created a special exemption from this 47 year old law for the particular bond issues authorized by this legislation.

Proponents of allowing banks to underwrite these bonds argue that the general public will be better served by the increased competition among bond underwriters. Opponents argue that repeal of this prohibition would lead to unwanted concentration of power within the bond market. Both these arguments are pursuasive. It is precisely for that reason that this issue should be resolved in a comprehensive manner, and not dealt with in a piecemeal fashion.

The Committee jurisdiction system has been established to provide member and staff expertise in a subject area. It is also important because it provides a certain amount of continuity to the oversight of laws and programs. The Interior and Insular Affairs Committee possess neither the expertise, hearing record or the jurisdiction to act on this issue.

The Committees of jurisdiction, Banking, Finance and Urban Affairs and Interstate and Foreign Commerce are actively pursuing a complete review of this subject. Indeed the Financial Institutions Subcommittee has already held more than 100 hours of hearings on various proposals to modify provisions of the Glass-Steagell Act. The Committee correctly concluded that any action on this issue or any attempt to indicate a committee position whether through statutory or report language would be ill-advised.

Bruce Vento.

ADDITIONAL VIEWS OF REPS. JERRY M. PATTERSON AND LAMAR GUDGER

Unfortunately, time and jurisdictional constraints prevented consideration of the potential cost savings to public bodies and ratepayers that would result if this bill were amended to permit commercial banks to underwrite bonds issued by public bodies to finance the new power generation and conservation facilities contemplated by this legislation.

The many power authorities now functioning in the Northwest, and in other states interconnected with the BPA, finance their capital projects in the municipal bond market through the sale of revenue bonds secured by the revenues from power sales. Because commercial banks are excluded from the underwriting and marketing of municipal revenue bonds, but not other Federal, state and local obligations, the market for revenue bonds, used for financing generation and conservation facilities by public bodies, is more limited than it is for those other obligations.

There is pending in another committee legislation which would permit banks to underwrite state and local revenue bonds, including the type of bonds contemplated to be issued by public bodies in furtherance of the purpose of this bill. That legislation would expand the competition for revenue bonds so that state and !ocal investment issuers can realize the cost savings that naturally flow from broader competition.

Because of the consistency of that legislation with the purposes of this bill, we hope that early and serious consideration will be given to that legislation so that the power needs of the Northwest can be met at the lowest possible reasonable cost.

JERRY M. PATTERSON.
LAMAR GUDGER.

ADDITIONAL VIEWS OF REPS. BOB CARR, MORRIS K. UDALL, ED MARKEY, GEORGE MILLER, JOHN SEIBERLING, AND BRUCE VENTO

We have specific concerns about certain provisions of S. 885 that are not addressed either in the report of the Committee or in other of the dissenting views thereto. Our concerns are about the relationship of the Bonneville Power Administration and the U.S. Department of the Treasury.

In 1974 the Federal Columbia River Transmission System Act removed BPA from the necessity of annual Congressional appropriations and set the agency on a more equal footing with utilities by establishing a revolving fund. The change also entailed setting interest rates paid on borrowing from Treasury at the rate for "similar bonds"—a rate determined by Treasury as that paid by the highest quality (triple-A) non-government utility bonds.

S. 885 as reported by the Interior Committee both doubles the amount of money BPA can borrow from Treasury and significantly lowers the interest rate payable on that borrowing. The amendments to existing law are cause for particular concern because of the unwarranted loss of revenue to the Treasury that would result and because of Bonneville's poor record of debt repayment.

Of equal concern, from the standpoint of Treasury, is the fact that the new interest rate set by the bill is a mysterious "government corporation" rate. In a recent memo to Chairman Udall, the Treasury Department states that this new rate "would complicate rather than clarify the statutory rate determination language, because there are no government corporations currently issuing bonds in the market. Therefore there is no benchmark for the rate determination proposed in the amendment." Treasury goes on to suggest substituting the present "triple-A non-government utility rate" as its preference for solving this administrative headache.

There has been no substantive argument offered for the change away from "triple-A non-government utility" borrowing rates. In view of the congressional decision in 1974 to establish the revolving fund and the triple-A utility rate as two pillars of the change in BPA's status, removing one pillar would seem to necessitate removing the other as well. But there has been no suggestion of deleting the revolving fund arrangement.

Clearly the intent of the amendment is simply to lower the cost of borrowing for BPA. While the uncertainty surrounding the "government corporation" rate makes it difficult to pinpoint the difference the change would make for BPA, it is possible to project the kind of savings envisioned by the amendment by looking at an alternative to the "government corportaion" rate that has been floating alongside it rather vaguely in discussions of the issue. That rate is the Federal Financing Bank rate, which is 0.125 percent above the Treasury borrowing rate. The triple-A non-government utility rate presently accorded to BPA ranges from 0.30 percent to

1.30 percent above that. The "FFB" rates would lower enormously BPA's borrowing costs. What the "government corporation" rate would do—and for that matter, why it is the language of choice—is anybody's guess. And the Treasury, as it has made clear in its memo to the Chairman, would prefer not to guess.

Our concern over the interest rate is not merely academic. BPA is presently authorized to borrow up to $1.25 billion from Treasury for financing the construction, acquisition, and replacement of the transmission system. S. 885 doubles that level to $2.5 billion, with the increased borrowing earmarked for conservation and renewable energy.

In 1977, the last year for which information is readily available, the weighted average interest paid on all BPA debt outstanding was 3.25 percent. Bonneville presently enjoys a 50-year repayment period for its loans from the Treasury, and it has fallen into the habit of quickly repaying its high-interest borrowing while permitting its low-interest debt to remain unpaid. The Office of Management and Budget has asked the Department of Energy to study the question of repayment policies and procedures in order to improve the consistency of existing policies and procedures with sound repayment of public debt. The objective is to establish a firm repayment schedule and to remove the discretion presently allowed Bonneville in determing which debt will be paid off when.

The Committee consented to authorize a 1 percent interest penalty charge for every year that Bonneville failed to meet applicable repayment criteria. That is, however, the only concession the Committee made to the concerns articulated here. We believe the concerns warrant further attention.

Bob Carr.
Morris K. Udall.
Ed Markey.
George Miller.
John Seiberling.
Bruce Vento.

SEPARATE VIEWS OF REP. PAT WILLIAMS

"There are compelling reasons for the Committee to have adopted the Council arrangment set forth in section 4, as amended by the Interior Committee, in spite of the fact that some existing state authorities seem well protected by savings provisions of section 10 of the bill.

"First, the multistate Council's determinations are, in essence, in aid of those state authorities reserved. State resources and conservation planning reserved by section 10(a), for example, can best be protected by allowing the Northwest states (in cooperation with each other, and with BPA, the utilities and the public) to shape and coordinate their planning cooperatively at an early point in time through the Council, rather than trying to react, ad hoc, late in the planning process.

"Second, the responsibilities given the Council reflect the Committee's interest in keeping Federal and state planning responsibilities balanced, and to take into account that S. 885 gives BPA a significantly larger role in future resource planning than it would otherwise have. Except for the bill, the Northwest states would have the dominant role in shaping policies for utilities within their borders; but because the scheme in S. 885 would facilitate development of conservation and other resources, it will encompass most such proposals. Recognizing this, the Committee adopted a Council scheme that would restore a strong, cooperative planning role for the states.

"Finally, though several state authorities are preserved by section 10 of the bill, at least one is weakened. Those states which now regulate the bulk power costs of investor-owned utilities would lose much of that jurisdiction to the Federal Energy Regulatory Commission. Under the scheme in the bill, companies would sell power to BPA under sections 5(c) and 6; these sales would be wholesales in interstate commerce, instead of costs which are now largely internal to the companies. Section 9 does provide for FERC to seek the advice of a joint state board in regulating wholesale sales to BPA. But the states' participation in the Council would be a clearer, more useful tool with which to affect regional bulk power planning, more comparable to the authority lost to FERC under the bill."

PAT WILLIAMS.

SEPARATE VIEWS OF REP. JOHN F. SEIBERLING

I voted against this legislation for a number of reasons, some of which Mr. Weaver explains in his dissenting views to the Committee report. I did not co-sign his dissenting views, as I am not sufficiently familiar with some aspects of the Northwest power situation which are peculiar to the region. However, I share many of Mr. Weaver's concerns.

The effect of the guaranteed purchase authority provision, and the federally-backed debt financing of new utility construction is to give an artificial advantage to investor-owned utilities in the Northwest at a time when utilities in other regions of the country are scaling back construction plans because of reduced demand for electricity. The rate-setting discretion given to the Bonneville Power Authority administrator under this bill would effectively mask the higher costs of new thermal power generation brought into the system under the guaranteed purchase authority, and foist additional burdens on rate payers to local public utility districts despite the conservation and alternative resource development efforts of such districts.

I also object to, and offered an amendment in Committee to delete, a provision (Sec. 9(g)) which would exempt utilities contributing to the Bonneville power system from the Public Utilities Holding Company Act (PUHCA). The intent of this provision, as explained by its proponents, is to assure that Pacific Power and Light, the largest utility in the region, will be able to invest in new resources without divesting itself of other unrelated properties. The effect would be to allow any company created to supply BPA to exempt itself likewise from the requirements of PUHCA.

The Public Utilities Holding Company Act was enacted to protect consumers from abuses common to corporate structures, and to impose antitrust restrictions to protect investors and prevent "sweetheart" deals between the related members of holding companies. A 1977 GAO report showed that the Security and Exchange Commission had granted administrative exemptions to 84 of 100 utilities eligible for regulation, but we are told that statutory exemption is needed to fulfill the purposes of this bill—the purchase of private utility resources by the BPA. Not only does this provision create an opportunity for abuse in the Northwest region, but it opens the Congress to appeal from other areas of the country for similar treatment.

The amendment I offered to delete this provision was defeated in the Committee, but I intend to raise the issue again on the floor to assure that the Public Utility Holding Company Act is enforced nationwide, and that its protections are assured to utility rate-payers.

John F. Seiberling.

DISSENTING VIEWS OF REP. BOB CARR

"HEADS I WIN, TAILS YOU LOSE"

My experience with the Pacific Northwest Electric Power Planning and Conservation Act has been, from first to last, bewildering. Let me outline quickly the maze through which I have followed this will o' the wisp.

Several years ago the Bonneville Power Administration and its customers—public and private utilities and direct service aluminum industries—discovered to their alarm that the Pacific Northwest's seemingly endless supply of federally distributed cheap hydropower is, in fact, finite. A consequence of that discovery is that the Pacific Northwest faces a future in which only a major part of its energy needs can be met by power from existing federal dams. (It's not, in fact, such a bad future. Would that my own region, the Midwest, had such adversity to bear up under. But I digress.) Rather than taking what seems to be the logical next step—simply hanging the "Sold Out" sign on the BPA door and leaving the job of providing electrical energy to the utilities—the proponents of this bill would call in the federal government to assure a cheap energy future for the Pacific Northwest.

As one who has, since coming to Congress six years ago, acted on the belief that the federal government should avoid unnecessary involvement in any area of the private sector, I was confident that my views on this matter would be shared by my colleagues in the House, particularly since testimony before the Interior Committee by the General Accounting Office and testimony before the Nuclear Regulatory Commission by three major investor owned utilities in the region confirmed that the utilities can finance and construct whatever power plants are necessary. I was, therefore, astonished at the zeal of some of my Committee colleagues who have made a career championing free enterprise as they argued that the goal of rational energy planning in the Pacific Northwest could be accomplished only by vastly expanding the powers of an agency of the U.S. Department of Energy.

Not wanting to appear slow to absorb the surprising insights of my colleagues, I proposed to require the Department of Energy to see in what manner the planning mechanisms mandated by this bill could be duplicated in other regions of the country. Imagine my dismay when my colleagues voted my amendment down.

Moral: what's sauce for the goose is not always sauce for the gander.

Now, the fact is you can't have it both ways. Either it is well and good for the federal government to involve itself directly in regional energy planning and financing, or it is not. It cannot be good only for the Pacific Northwest and not for any other region of the country.

For decades the Pacific Northwest has enjoyed plentiful electric energy at rates that are almost unbelievably low in comparison to those in other regions of the country. According to information put out by the Seattle City Light Company, the following rates represent the residential cost per month for 1,000 kilowatts of electric power as of December 1, 1977:

New York, N.Y	$84.96
Los Angeles, Calif	52.44
Detroit, Mich	44.10
Omaha, Nebr	34.25
Memphis, Tenn	26.23
Tacoma, Wash	12.80
Seattle, Wash	11.28

While no one begrudges the good fortune of the Pacific Northwest in its natural resources—while no one wishes unbuilt the dams that have powered the region into the 1980's—it is possible to question the wisdom of a bill that would, through such dubious means as guaranteed purchase authority (see the Dissenting Views of Mr. Weaver), melded rates (see the Dissenting Views of Mr. Weaver), the Public Utility Holding Company Exemption (see the Dissenting Views of Mr. Seiberling), and extremely low interest rates on borrowing from Treasury (see the Additional Views of Reps. Carr, Udall, Markey, Miller of Calif., Seiberling, and Vento) perpetuate artificially the low rates enjoyed by the Northwest to the exclusion of citizens in other regions.

The Pacific Northwest Electric Power Planning and Conservation Act is founded in an apparent belief that electric power cometh from the federal government—as it was in the beginning, it is now and ever shall be. That simply is not the case. For the Bonneville Power Administration to move from its present role of marketing surplus hydropower from federal dams to managing the region's energy future, including financing the construction of new power facilities, is most assuredly not a natural development ordained immutably by divine providence. It is, in fact, an extraordinary and unprecedented extension of federal power that will lift from the shoulders of the utilities of one region—and one region only—the responsibility for providing for the region's energy future. In so doing, it will cushion one region—and one region only—against the economic and social shocks that all regions are experiencing as they try to cope with the uncertain energy needs of their citizens.

The feature article in the August 2, 1980, issue of National Journal surveys the progress our nation's utility industry has made in meeting the challenges today's energy situation offers—challenges such as escalating fuel costs, increased construction costs, and unpredictable demand for power, which all utilities and all consumers in all parts of the nation face. The industry is inching toward policies such as marginal cost pricing that will reflect the new energy realities of today. For the federal government to reach into one region of the country and to offer unprecedented assistance to the utilities of that region and that region alone would upset the still fragile balance of this new movement in the industry.

What is called for in the Pacific Northwest is rather delicate surgery to ease the dependence of the region's utilities on Uncle Sam. What S. 885 provides for the operation is a sledgehammer and a riveting iron. In its eagerness to respond to the calls for help from the Pacific Northwest's power interests, the Committee is paying insufficient heed to three crucial national interests. In a final ironic twist, S. 885 hangs the "Sold Out" sign not on the door of the Bonneville Power Administration, but on these three interests:

1. regional equity;
2. caution in expanding the role of the federal government; and
3. energy conservation and prudent management of energy resources nationwide.

BOB CARR.

DISSENTING VIEWS OF REPS. JIM WEAVER, PETER KOSTMAYER, BRUCE VENTO, EDWARD MARKEY, AND GEORGE MILLER

Repeatedly in this report and in the bill itself, it is stated that this bill does not constitute a precedent for future federal involvement in other utility systems or regions of the country. That fact leads one to wonder just what sort of precedent is set that it must be denied so often. In recent months, the Congress has enacted legislation that a few years ago would have been thought extraordinary: it has pointed the direction to what is now being called the "bright future of business-labor-government partnership." And now "reindustrialization" has become the watchword for federal assistance to corporations in trouble.

While we do not quarrel with the principle of the federal government assisting industries that find themselves ailing, we think it crucial that a line be drawn between those industries caught by the exigencies of unforseeable economic and energy developments and those suffering at their own hands—which, due to shortsightedness or excessive dependence on the federal government, find themselves in a "crisis of dependence." The utilities of the Pacific Northwest, we would hold, fall into the latter category.

For the federal government and the American taxpayer to suffer their ostrich-like head burying will only encourage further head-burying by utilities in other regions, and perhaps, in other industrial sectors. It is that fact that is repeatedly denied in this legislation and in this report.

Two interconnected themes dominate this bill and the utility support for it. The first is a preoccupation by Northwest utilities with a near-term crisis of their own making that demands hasty action. The second is the utilities' abandoning of responsibility and the concomitant usurpation of control by the federal government. The latter will have severe, long-term repercussions for the nation all out of proportion to the former need for short-term action within the region. By pushing the federal legislative panic button in response to a regional utility problem, the Congress is inviting other requests—or demands—for financial bailouts.

Northwest utilities have been spoiled; unlike any of their counterparts in other regions, they have until now been blessed with "requirements contracts" from the Bonneville Power Administration (BPA). These contracts state that the federal government must serve all their power needs. Despite the impending shortage of federal power, the utilities understandably want to retain those contracts; they place the responsibility for power supply fully on the back of the federal government. But, because there is no significant new source of hydro power available to BPA, it faces a dilemma—increased demand and static supply. This is the near-term crisis—its origin is in the special treatment the Northwest uitilities have always enjoyed; its solution lies not in further special treatment, but in the discipline to get on with the job themselves, just as every other utility in the nation must.

Congressman Bob Carr characterized this special treatment and the best way to obviate the need for this legislation when, in response to an explanation of this bill, he asked BPA Administrator, Sterling Munro, "Why don't you just say you're sold out?" Every other Federal Power Marketing Administration (Southwest Power Administration, Alaska Power Administration, Western Area Power Administration and Southeast Power Administration) is presently allocating a shortage. That is, they provide to their customers what federally generated hydropower is available and the utilities provide for the remainder of their needs. There is no reason BPA and the Northwest utilities could not do the same.

Because the utilities want BPA to assume responsibility to meet their load growth and because BPA has no more power to market, the Northwest Power Bill will empower BPA to purchase the capability of new coal and nuclear plants from the very utilities it would serve. In the process, BPA, a federal agency, will guarantee that it will pay for the plant, no matter if it operates or not, and, in turn, supply all requested power to any Northwest utility. So, no longer will the utilities be responsible for building generation or supplying their customers; now it will be the responsibility of the federal government. This precedental shifting of responsibility is not necessary.

This bill is touted by its supporters as a progressive experiment crafted to address a unique regional problem. It can no longer be considered an experiment, however; once before—only once—this federal "guaranteed purchase authority" was used. That was the experiment, one that has proven a dismal, costly failure. In the early 1970's, these very same utilities and the BPA, through a complex accounting procedure, circumvented a statutory prohibition and effected a BPA guarantee of three thermal power plants in Washington state, the so-called net billing agreements. Since construction commenced, these plants have risen in cost from $3.1 billion to $9.3 billion, and have suffered schedule slippages of over five years per plant. It is just such construction irresponsibility and mismanagement that the Northwest Power Bill would expand and further as the utilities receive the guarantees and the government assumes the risk.

But this bill goes much further. While the experiment mentioned above provided financing for several specific plants, this bill will establish a system outside of which no utility in the region will be allowed to operate. It centralizes control in a federal agency, thus severely restricting the pluralism that for so long has characterized the Northwest utility industry.

Each of the major concepts of the bill should be examined carefully in order to understand the pattern woven by the two themes of (1) a history of special treatment begetting further demands for federal largesse, and (2) an abdication of responsibility by the region's utility and the assumption of control by the federal agency. Each provision and the larger pattern also should be studied to understand the template on which future utility bailout legislation will be struck.

GUARANTEED PURCHASE AUTHORITY

BPA presently only markets power produced at federal hydroelectric projects and serves as the coordinator of the Northwest's transmission system. This bill would change that drastically by making BPA the primary developer of electric energy in the region. The utilities would build new power plants, but BPA, under the purchase authority (sections 6(b)(1) and 3(19)), would guarantee prior to construction commencement, that it would purchase the theoretical capacity—not output—of the plant and thus, pay the full cost of the facility, "whether or not operating or operable and notwithstanding the suspension, reduction or curtailment of project output." The proponents of the bill claim that this is nothing new, that all utilities assume the risk of plant failure as well as the benefits of plant operation, and that this bill only expands that practice to the entire region, the so-called one-utility concept. Their arguments ignore several problems:

Guaranteed Purchase Authority will result in mismanagement.—This practice will not only condone, but will specifically mandate, the separation of (1) the authority to build a power plant from (2) the responsibility to pay for that plant. By removing the responsibility to pay for mistakes, to keep costs low, to build on schedule, the Congress would be inviting utility mis- or lax management.

Guaranteed Purchase Authority is a blank check signed by every ratepayer in the region.—Because BPA will agree to purchase the full capacity of a new power plant, and thus must pay for it no matter if it works or not, every utility that receives BPA power will pay for it. And all its ratepayers will pay for it, whether the plant is completed on time at cost, or 5 years late and at 300 percent of cost. This will happen even though that utility may have negligible load growth and contribute not a whit to the demand for the plant. In other words, the slow-growing utilities of Western Montana will be paying for the load growth in Seattle and Portland because the new expensive plants being built in the region will be needed to serve only the fast growing areas.

While some might say that the region should "hang together" and share the benefits and risks of regional power development, one might ask where does that theory end? Should we nationalize the electrical grid? Should rural New Mexico pay its "fair share" of expensive new plants built to serve Southern California? Should Eastern Indiana finance Chicago's load growth? Should everyone in the South pay for the economic development in Atlanta and Orlando? If not, why wish it on rural Oregonians or Montanans?

Guaranteed Purchase Authority makes the federal government responsible for activities that private industry can and should continue to do quite well.—Utilities all over the country are financing new facilities with no apparent crisis. While their bond costs might be higher than they would like, that is true of every entity entering the bond market. Federal subsidization of borrowing is not an answer; rather, it is a well known cause of inflation. The General Accounting Office testified before the Water & Power Resources Subcommittee of the Interior Committee and had this to say about purchase authority:

> We do not see a need for Bonneville financial participation in conventional thermal powerplants unless it is clear-

> ly shown that regional utilities are incapable of (building new powerplants) without Bonneville sponsorship. It has been GAO's position that the Federal Government should not take over functions that the private sector could or has been performing unless it has been demonstrated that the private sector is unable to perform. We have seen no demonstration that Northwest utilities are unable to construct or secure private capital needed for constructing conventional powerplants.

Guaranteed Purchase Authority could bestow a financing advantage on the Northwest to the detriment of the rest of the country.—One of the few remaining true marketplaces is that in which bonds are bought and sold. If one person is given an advantage, someone else suffers a disadvantage. S. 885 clearly provides Northwest utilities with an advantage; it is not yet clear exactly who will suffer the disadvantages. An internal Department of the Treasury memorandum on this matter stated:

> Bonneville's assumption of financial risks of new energy projects in the Northwest will result in further subsidies to all utilities and their electric customers in a region which already enjoys extremely low electricity rates largely due to the Federal Columbia River Power System.

While the quality of the BPA guarantee has been downgraded, by amendment, from a federal to a regional guarantee, bonds issued by utilities as a result of this Act will still be more attractive than any like quality bond. School districts, water districts, hospitals, non-Northwest public utilities and non-Northwest investor-owned utilities will likely then pay more for their money.

REQUIREMENTS CONTRACTS

The fact that publicly-owned utilities in the Northwest have for decades enjoyed BPA requirements contracts has already been pointed out. This special treatment, we claim, has contributed to the demands for this bill as those utilities have become lazy, and want more than anything else to have someone else—the BPA—do the job. So why, one must ask, should the Congress now consider granting requirements contracts to investor-owned utilities as well? Why contribute to their abdication of utility responsibility by obligating the federal government to serve their load? While we can think of no good answers to those questions, that is exactly what this legislation does.

Perhaps only a series of questions can adequately point out the wrongheadedness of this policy.

Why should it become the federal government's obligation to serve the full power needs of investor-owned utilities?

Will not this provision erase any future distinction between publicly-owned and investor-owned utilities insofar as they stand before the federal power marketing agency for an allocation of powers?

Does this not change the 50-year old policy of preferential treatment of public power?

Will not investor-owned utilities in the rest of the nation plead that they too should be granted access to federal power?

Once it assumes responsibility for supply, how long will it be before the federal bureaucracy expands its control over utility decisions?

It is claimed that BPA must provide requirements contracts to the IOU's for only then will these utilities provide BPA power through the guaranteed purchase agreements. That this argument is a tautology is bad enough; that the Congress would consider passing this precedent-setting provision into law on the basis of that tautology is far worse: The only reason BPA would need to purchase power from one or a group of IOU's is in order to serve their load. Remove the load and you remove the reasons to purchase their power.

PRICE MELDING

The third part of the trinity-like centerpiece of S. 885 is the wholesale price melding that is required of BPA. First, BPA is obligated to serve the utilities; second, it must acquire new resources to do so; and third, it must average the cost of the new very expensive thermal power with its existing extraordinarily cheap hydropower. Such a practice flies in the face of hardfought, but now accepted, principles of energy policy and pricing. Ten years ago, the academic world recognized average cost pricing as deleterious. Later, the regulatory bodies throughout the country agreed. And even the Congress, in the Natural Gas Act of 1978, recognized that prices kept artificially low through price melding would lead to wrong decisions. Yet this bill would require a federal agency to do just that in setting its power rates in order to once more remove any incentive for the Northwest utilities to act on their own.

The price meld would work in the following way. New 60-100 mill/kwh thermal power would be added to BPA's 3 mill/kwh hydropower in order to serve an increased regional load. Yet one utility in the region might have no load growth, thus putting no additional demand on BPA and contributing not at all to the need for the plant. It will, however, have to pay for it as BPA's rates rise to accomodate it. Another utility, looking ahead ten years to determine how much new power it needs and where it is going to acquire it, would, under S. 885, be presented with a dilemma. Say it needed ten (10) more megawatts in 1991 than in 1990. The additional power necessary to meet its load growth (and others throughout the region) might raise BPA's rate from maybe 15 mills/kwh in 1990 to 18 mills/kwh in 1991 (the result of a meld of, say, an 80 mill marginal cost resource with BPA's existing pool). Very little could compete in a utility manager's eye with 18 mill power in 1991, and thus, he or she would be "forced" to buy what seems to be 18 mill power from BPA. But the region would actually be paying 80 mills. For this reason, all the alternative resources that cost between 18 and 80 mills would be foregone by the utility manager even though they are the most cost-effective investment for the region. (The obvious answer to this dilemma is the institution of a two-tier pricing scheme; an amendment to do just that was defeated in the Interior Committee on a 21-21 tie vote).

DECISIONMAKING

One of the key elements of the Northwest utility industry over the years has been its diversity, its pluralism. Perhaps more than any other part of the country, the Northwest employed a model of local control, decentralized decisionmaking that allowed individual communities to determine the future of their utility. In a time when the American public is crying out for less bureaucratic control, not more, this model should be maintained. But the Northwest Power Bill does exactly the opposite.

All decisions regarding new power resources, rates, conservation programs and standards and fisheries protection in the region will be made by BPA and a new Pacific Northwest Electric Power and Conservation Planning Council. At last count, fully 36 pages of S. 885 were devoted to this federal decision-making process alone. No more will the Eugene Water and Electric Board or the Clark County Public Utility District of the Blachley-Lane Electric Cooperative be able to determine for themselves, through their elected Boards of Directors or Commissioners, in what direction they want to go. Following passage of S. 885, the federal government will determine that without local "interference."

But will this innovation make matters work more smoothly? We doubt it.

When asked by its client to analyze the workability of this process and its impact on resource development, the Counsel to the Washington Public Utilities Districts Association agreed with us and had this to say:

> "We see serious legal problems with respect to financing and construction of new publicly-owned projects in connection with the purchase authority provisions of the bill. In the event of litigation * * * which is considered likely * * * it would be at least several years before financing and construction of such plants could go forward."

So the local utilities will be caught between the proverbial rock and hard place. On the one hand, they will be constrained to observe only the federal bureaucracy making for them the decisions that are at the very foundation of their utility business and, on the other, that process will likely run into severe litigative obstacles. All of this is the price they must pay for the "free lunch" (requirements contracts) that they are requesting of this legislation, however.

PRICE EQUALIZATION

Finally and perhaps most enigmatically, comes the question of the price-fixing scheme proposed in S. 885 and its effect on competition within the utility industry. The electric utility industry is often thought of as regulated and monopolistic in nature. However, that is only partly true. In most states, utilities serving at the retail level do have franchise protection. However, the retail market is subject to the competitive opportunity for consumers to replace their supplier by choosing to retain or change the nature of ownership of the utility. Price competition is but one of the reasons for the exercise of this consumer right. S. 885 seeks to equalize rates at the retail level, which would have the effect of freezing competition within the Pacific Northwest. The pressure to maintain competitive rates would be eliminated for private and public utilities alike, all other conditions of service being equal. Never has Congress enacted a law with the purpose of eliminating retail price competition between electric utilities.

In the wholesale market there is a well-established body of law requiring competition, particularly when a supplier occupies a dominant market position. BPA will, under S. 885. Offering all utilities requirements at a melded rate throughout the region would abolish competition for supply and price to the detriment of all consumers. Their utility would bask in a Congressionally-blessed price-fixing scheme—complete with federal financial guarantees—with the assurance that they will never have to take the initiative to seek the lowest cost source of power. Extension of monopoly under this bill is not confined to the electric industry. Direct Service Industrial customers, particularly those engaged in the sale of the same product, are guaranteed a uniform rate for their energy requirements. In an energy-intensive industry, such as aluminum production, these customers would enjoy the advantage of having the energy component of their product priced uniformly by the federal government, leading to diminished competition for the purchasers of the products of the DSI's. S. 885 even commands BPA to set prices at the level which these industries would pay if they received energy from local utilities, furthering the price-fixing scheme whereby the industrial customer would be precluded from seeking out a lower priced source of energy.

These considerations also point up what the Northwest is giving up in its headlong rush to a solution—any solution—to its "crisis of dependence." They also make clear the abuses that could be expanded to the rest of the nation as well.

One footnote is in order: much has been made of the public participation provisions of the bill and the precedent-setting cost-effective criterion for resource acquisition. We support both, but we also recognize that concentrating on style while ignoring the substance of the issue will not make the substance go away. This shortsightedness—this insistence that rational planning will result from public hearings despite the anachronistic price-mending, despite federal loan guarantees, despite the removal of any incentives for utilities to act on their own—is nowhere better illustrated than in the bill's support by a public interest organization which is the first to admit that it didn't examine the substantive aspects of the bill. Public hearings do not rational planning make.

If one accepts the assumption that the Pacific Northwest faces an electrical energy crisis, and it is the federal government's responsibility to solve that crisis, and that the only way to do so is to make a federal bureaucracy the centerpiece of energy planning for the region's utilities, and that loan guarantees and price-melding are integral parts of the federal bureaucracy's role, if one accepts all that, then the Pacific Northwest Electric Power Planning and Conservation Act is a fairly good attempt at meeting those goals. But if one wants to maintain local control over utility matters, if one believes that local utilities in the Northwest should solve their own problems like utilities around the rest of the nation must, if one believes that local citizens and ratepayers should not be saddled with extra costs in order that risks of that utility business may be reduced, and, most importantly, if one is concerned that the federal government—following the precedent of this bill's passage and implementation—might be called upon to bailout other utilities and industries, then an alternative to this legislation can and must be found.

JIM WEAVER.
PETER H. KOSTMAYER.
BRUCE F. VENTO.
EDWARD J. MARKEY.
GEORGE MILLER.